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PREFACE

This book does not claim to be a history of Pakistan; it is concerned with a part of that history, namely, the ideological and geographical changes in Pakistan. Its aim is to show how from the Secularism of Quaid-i-Azam, Muhammad Ali Jinnah, the State has drifted into the hands of an orthodox element which claims that they will make Pakistan a totally Islamic State, as it was in the days of Nizam-i-Mustafa.

There can be no doubt that Jinnah was a secularist and against theocracy. In his speech to the Constituent Assembly on 11th August 1947, he had given a picture of Pakistan which was nothing short of a secular state in which Muslims and non-Muslims could live together and be its citizens, with equal rights of citizenship, and that religion would be a private affair of the individual, having nothing to do with the administration of the State.

He died on 11th September 1948 and six months after his death, Khan Liaqat Ali Khan, the Prime Minister, introduced in the Constituent Assembly a Resolution, called the Objectives Resolution, which was quite contrary to the Quaid-i-Azam's conception of the State. The non-Muslims complained against it saying that in the State envisaged by that Resolution their position would be that of Zimmies, contrary to what the Quaid-i-Azam had declared. But since they were in a minority and Liaqat Ali Khan would not change his stand, they walked out of the Assembly and the Resolution was passed.

The present political parties, each of which, except the Muslim League, was opposed to the establishment of Pakistan and given it indescribably vulgar names came to Pakistan, leaving 4 crores of Muslims in India to their fate. These parties were the Ahrar, the Jamaat-i-Islami, the Deobandis, the Brelvis, and the Ahli-Hadis. On the strength of the Objectives Resolution they made the Ahmadis as their first target, and demanded them to be declared a minority. A council of action was formed which drafted an ultimatum for the Prime Minister, Khawaja Nazimuddin, that if the Ahmadis were not declared non-Muslims, they would resort to direct action. Ahmadis' property was destroyed and burnt and many Ahmadis were killed. The Council of Action met Khawaja Nazimuddin and presented the ultimatum to him. The Khawaja found himself confronted with a difficult situation but realizing his responsibility for maintaining law and order, he ordered the arrest of members of the Council, and declared Martial Law in Lahore where the situation had got completely out of control of the Civil authorities. After the withdrawal of Martial Law a public inquiry was ordered into the causes of the disturbances. And an inquiry court was set up of which I was nominated as the Chairman and my friend Mr. Justice Kayani its member. After the report of the inquiry committee was presented to the Government the demand for an Islamic State receded and the Ulama were thrown in the background. Nothing was heard of the ideology of Pakistan and Islamic State for a long period, not until 1962 when a member of the Jamaat-i-Islami defined ideology of Pakistan as Islam. In the meantime another event of great importance had occurred. The Governor-General, Ghulam Muhammad had dissolved the Constituent Assembly and the result of the crisis was that the Federal Court in Yousuf Patel's case ordered the recalling of a new Constituent Assembly, on the lines on which the dissolved Assembly was chosen.

Mr. Muhammad Ali, the leader of the new Assembly, prepared the first Constitution of Pakistan, and became the first Prime Minister under the new Constitution. In the new Constitution the State was named the Islamic Republic of Pakistan. He also appointed a Commission to bring the laws in conformity with the injunctions as set out in the Quran and Sunnah, to be given legislative

effect by the National Assembly; but the Assembly was not bound to do so. Mr. Muhammad Ali's Prime Ministership lasted from August 11, 1955 to September 13, 1956.

The Muslim League had suffered a crushing defeat in the 1954 elections at the hands of the United Front, consisting of the Awami League and the Krishak Sramik Parties. In the West Pakistan the Republican Party had appeared under the leadership of Dr. Khan Sahib, the brother of Abdul Ghaffar Khan, the Sirhaddi Gandhi. Neither in the manifesto of the Awami League nor in that of Krishak Sramik Party, was there any reference to Islam or the Quran and Sunnah, and Dr. Khan Sahib was a secularist by conviction. Mr. Muhammad Ali's Islamic State and his Islamic Commission therefore remained a dead letter.

Skipping over the regime of Suhrawardy, Chundrigar and Malik Feroz Khan Noon, we come to Ayub Khan's time. Ayub was a broad minded man but he had no party of his own. His speech at Darul Ulum, Tando Allah-Yar Khan, and his other references to Islam represent his conception of Islam. If he had a party of his own way of thinking, the history of Pakistan would have been different but not having a party of his own he called a convention of the Muslim League at Karachi and became its member. He had omitted the word "Islamic" from the name of the State and there were no fundamental rights in his Constitution but under pressure of the orthodox members he had to soon restore them. His Martial Law regime lasted for a long time. Ultimately, on the authority given to him by the basic democrats, he gave a Constitution to the country in 1962. The above mentioned incidents of the omission of 'Islamic' from the name of the State, the omission of Fundamental rights, and his Convention of the Muslim League at Karachi relate to when the Constitution of 1962 came into force. In the preamble to that Constitution he had referred to Islamic principles of equality, justice and tolerance.

Mr. Bhutto having served for 8 years under Ayub, resigned or was driven out. He founded the Pakistan Peoples Party with Islam as the *din* of the party and a socialistic programme for his economic policies. He raised agitation_against Ayub Khan and his policies,

with the result that Ayub who had suffered two heart attacks had to abdicate and transfer power to the Chief of the Army Staff, General Yahya Ali Khan. In the demonstrations and processions against Ayub by the Peoples Party vulgar and indescribable slogans were raised and the Peoples Party had rendered government impossible.

Yahya proclaimed Martial Law and himself assumed the office of Chief Martial Law Administrator. As he had dissolved West Pakistan into its four constituents, and ordered elections on the basis of one-man one-vote, the number of members of the National Assembly and the Provincial Assembly in East Pakistan, which was a majority province, was much larger than that of all the Provinces of West Pakistan. But the elections held under the new system were the fairest ever held in Pakistan.

The result of the elections was that in East Pakistan, Mujib who was the leader of the Awami Party won almost all the seats while in West Pakistan Mr. Bhutto swept the poles. Yahya had promulgated a Legal Frame Work Order in which it was stated that since Pakistan was won in the name of Islam, Pakistan ideology had to be preserved in the Constitution which was to be made by the National Assembly within 120 days. Then came the war of 1971. Mujib had been preaching Bangladesh nationalism and would not budge from his six points which, if given effect to, would have dissolved Pakistan. The Mukti Bahni and the Bengal Rifles mutinied and started killing Beharis who were non-Bengalis. To suppress this mutiny, Yahya sent forces from West Pakistan. The forces acted in such a manner that East Pakistanis began to flee to India as refugees. India sent her own forces to East Pakistan on the plea that this large influx of refugees was straining its economy and declared war on Pakistan. The result was a disgraceful surrender of Pakistan army to the joint command of India and Bangladesh. Bangladesh declared its independence and one of the Ministers of Bangladesh declared that religion had been banished for ever from the collective life of the new State. Thus Islam proved to be too tenuous a bond to keep East Pakistan and West Pakistan together.

In West Pakistan Bhutto was declared the Prime Minister, having first been sworn in as the Chief Martial Law Administrator by Yahya

himself. Near the end of his rule, he passed an Anti-prohibition Act, banned gambling and races and declared Friday to be the weekly holiday. By an amendment of the Constitution he declared Ahmadis to be a non-Muslim minority. All this was done with a political motive—to gain support from or be popular with the people.

Elections were held in West Pakistan in 1977. Nine political parties, the PNA, had combined to oppose Bhutto, but he won the elections, the PNA having opposed Bhutto with Nizam-i-Mustafa as their slogan. There were processions and demonstrations and the situation deteriorated to this extent that ultimately General Muhammad Zia-ul-Haq, the Chief of the army staff, on 5th July 1977 had to step in, declare Martial Law, and take the administration of the State in his own hands. Bhutto was tried for murder and has since been found guilty, sentenced to death and the sentence has been executed.

General Muhammad Zia-ul-Haq is a firm believer in Islam, but he is not a theologian. He took four parties of PNA in his cabinet, and while they were there, at their instance he promulgated some measures which he understood to be Islamic. But some of them are contrary to plain terms of the Quran e.g. his anti-prohibition Ordinance which punishes possession, consumption etc. of all spirituous liquors, is against the Hanafi belief, based on Quranic injunctions, provided they are drunk in a moderate quantity or as medicine.

He has punished adultery by stoning to death whereas the Quran prescribes 100 stripes for the offence of adultery (Surat-ul-Nur, xxiv, verse 2). He has also prescribed punishment for theft as the amputation of right hand from the elbow which is again contrary to Quran, as verse 38 of Surat-ul-Maidah is qualified by the next succeeding verse 39 which says "but whoso repenteth after his wrong doing and amendeth, Lo Allah will relent towards him. Lo Allah is Forgiving, Merciful."

Haraba, which comes from the word (harab) means war. General Zia has punished by cutting of the hand and foot on opposite sides of those who fight against Allah and His Measenger. In awarding punishment he has ignored verse 34 of Surat-ul-Maidah "save those who repent before ye overpower them. For know that Allah is

Forgiving, Merciful". This verse creates an exception in favour of those who repent before they are powered, that is, who cease fighting against Allah and his Messenger and repent, meaning thereby they embrace Islam. Such persons cannot be punished at all.

He has amended the Constitution by making the Shariat Benches Order a part of it. But analysed the Shariat Benches jurisdiction is very much limited; all important laws having been excluded from their jurisdiction.

These laws were passed when the PNA was taken in the cabinet and are undoubtedly their production. So the next result is that parties who opposed the creation of Pakistan were, by a srtange quirk of history, placed in a position where they could destroy the Quaid-i-Azam's conception of Pakistan and could give to the country a set of laws which are directly opposed to the Quran. According to Quran, Allah is Forgiving and Merciful but in the Order and the Ordinance promulgated, there is not a trace of His Forgiveness and Mercifulness.

39 Gulberg V, *Muhammad Munir*
Lahore.
August 8th 1979.

Chapter I

INCUBATION PERIOD

In the third decade of the 20th Century, Rahmat Ali, an otherwise unknown student of the Cambridge University, coined the word "Pakistan". In his optimism of Muslim brotherhood and unity but forgetting earlier episodes in Muslim history, including that of the Muslim rule in India, he urged that the Punjab, Afghanistan, (N. W. Frontier), Kashmir, Sindh and Baluchistan with an almost exclusive or preponderating Muslim population should be united in a separate Muslim state. Therefore taking the first letter from the names of these territories (P. from Punjab, A. from Afghanistan, (N. W. Frontier), K. from Kashmir, S. from Sindh and the last three letters from Baluchistan) he suggested the union of these territories in a new state called Pakistan. Thus he came to fame when under the name suggested by him Pakistan appeared on the world map on the midnight of 14th August, 1947. But this was not a state as he had conceived it. Only a portion of the Punjab was included in Pakistan; Kashmir, preponderating Muslim, did not accede to Pakistan and the eastern zone of the country which had a Muslim majority and which was included in Pakistan, was not a part of his dream.

Earlier Allama Iqbal in the course of his presidential address to the Muslim League in 1930 had suggested a Muslim state comprising the preponderatingly Muslim areas in the north-west of India. Even in this speech there was no reference to the Muslim majority areas in the east of India.

At the time Rahmat Ali coined the word Pakistan there was in the air not only the question of granting self-government to India but also the question of the Muslims' position in that government. The Simon Commission had been flagged out of India and neither of the two Round Table Conferences held in India had produced any unanimity or tangible result. But the question of the Muslims' position, if power was transferred to India, had come to the forefront.

After some 700 years of Muslim rule in India, signs of decay of the Moghal Empire had appeared after Aurangzeb. Earlier efforts of the union of Muslims and Hindus had been tried and failed. Akbar the Great's 'Din-i-Ilahi' had died with his death. Guru Nanak's idea of the unity of God and his effort to bring Hindus and Muslims together had merely produced a militant class opposed to Muslim Rule. Earlier Kabir's teachings in the time of Sikandar Lodhi that outer symbols of religion meant nothing and that God is one whether you call him Allah or Rama makes no difference, and that idolatry and caste are only symbols and that truth lies in the heart and reveals itself in love, did not bring Hindus and Muslims together. But Budhan, a Brahman, who like Kabir was the member of Bhakti and followed Kabir's teachings had died because the Ulama giving him the choice of embracing Islam or death, he preferred to die than become a Muslim.

After Akbar, with the exception of Jehangir, Shahjahan and Aurangzeb, the Moghal dynasty had produced mere non-compoops. The peacock throne was there but it was merely a symbol of past majesty and grandeur. Sikhs and Marhattas had raised their ugly heads and were a constant source of trouble and anxiety. And then came the Mutiny of 1857, of which the British considered Bahadur Shah Zafar as the head, though he was no more than a puppet in others' hands.

After the Mutiny of 1857, the British Crown took the government of the country in its own hands in 1858 and the British statesmen began to think of the ultimate destiny of India. One school, consisting principally of retired British bureaucrats, thought that India, the brightest jewel in the British Crown, should be held per-

manently and governed firmly and strictly. The second school was of a completely opposite view. The statesmen belonging to this group thought that Britain's finest day in India would be when power was peacefully transferred to a free India. The third school which was in a majority was of the view that changes in administration were unavoidable, but they should be introduced gradually and with caution. A few years before 1854 John Bright had asked :

"How long does England propose to govern India. But be it 50 or 100 or 500 years, does any man with the smallest glimmering of common sense believe that so great a country, with its 20 different languages, can ever be bound up and consolidated into one compact and enduring empire? I believe such a thing utterly impossible." ("Speeches of John Bright").

After the banishment of Bahadur Shah Zafar, the last Moghal Emperor, the Muslims felt a sense of loss. They retained their superiority complex and could not accept what had happened with an easy conscience nor could they find themselves willing to adapt themselves to the change that had come about. They had been rulers and soldiers and very few of them had taken to trade or professions. As against this the Hindus welcomed the change which had put an end to 700 years of foreign rule. They did not mind if one foreign rule was replaced by another alien rule. The memory of 700 years rule by Muslims was rankling in their heart. The Muslims who consisted one fourth of the population were still untouchable, to be despised and hated. The Hindu, despite his caste system, has a remarkable capacity for adaptability. In the Moghal times they had learnt Persian and there were still some families among them who could till quite recently write, read and understand Persian. But when Persian was replaced by English as the official language and three Presidency Colleges were founded they learnt English as avidly as they had learnt Persian, with the result that they easily found posts of clerks and higher posts in the new administration. But the Muslims could not get over their superiority complex, meaningless though it had become, and the English language and Western civilization continued to be an anathema for them. They found their mosques and their religion,

which by now had been filled with superstitions, matters of pride, with the result that their economic and material position consistently continued to decline. As the British considered them to be primarily responsible for the Mutiny they were looked down upon with contempt and all their favours and privileges were confined to the Hindus. Their position had become in fact pitiable.

Some 15 years after the Mutiny, Sir William Hunter writing in 1871 thus described their position in his book "The Indian Musalmans":—

> "A hundred years ago, the Musalmans monopolised all the important offices of state. The Hindus accepted with thanks such crumbs as their former conquerors dropped from their table, and the English were represented by a few factors and clerks. The proportion of Muhammadans to Hindus is now less than one-seventh....in fact there is now scarcely a Government office in Calcutta, in which a Muhammadan can hope for any post above the rank of poster, messenger, filler of inkpots and mender of pens."

Sir Syed Ahmad Khan, dubbed by the Ulama as a heretic, was the first post-Mutiny thinker to realise this pathetic condition of the Muslims. He attributed this condition to three causes: (1) the superstitious beliefs and practices that had entered Indian Islam (2) lack of emphasis on the assimilative and universal character of Islam and (3) the aversion of the Muslims to Western education. Against the opposition of the Ulama he established the Anglo-Muhammadan College at Aligarh, the nucleus of the Muslim University of Aligarh, which created a new Muslim generation who believed in Islam and also favoured modern trends. In his series of Articles published in the "Tahzibul Akhlaq" and public speeches he boldly spoke against the general and indiscriminate practice of polygamy, for modification of the doctrine of riba (interest) and against some punishments like stoning to death and cutting off of hands. He attempted to give to the conception of miracles, angels, jinns, virgin birth of Jesus, miraj (Prophet's ascension to Heaven), bodily resurrection on the Day of Judgement, and Heaven and Hell a symbolic meaning. (Tafsir and Hali's "Hayat-i-Javed,"

590-612). He was abused by the Orthodox as well as by that peripatetic speaker, writer and politician, Jamaluddin Afghani, who was more of a politician than a religious scholar and whose favourite theme was pan-Islamism. He (Sir Syed) also explained the phenomenon of revelation and restricted Quran and Sunna to devotional matters. In his opinion religious injunctions relating to social, economic and cultural matters were applicable only to primitive societies. As we shall see later he was the first person who gave a political justification for what subsequently became the separate state of Pakistan. Syed Ahmad had sought to show that Islam was no barrier to scientific inquiry and social progress. Another scholar who thought on similar lines was Syed Amir Ali (1849-1928) who taught the Muslims that compared with other religions they believed in a religion and a culture far superior to other religions and that therefore they should be proud of and true to their own religion which was ample enough to permit incorporation of new ideas. Thus while Sir Syed Ahmad believed that Islam was not inimical to liberal progress, Amir Ali presented an Islam that was that progress. (W.C. Smith, "Modern Islam in India,"(1946) pp. 24-26, 49). Muslim leaders of the early twentieth century concentrated their attention in seeking protection from the Hindu domination. In particular they wanted a reserved quota in the public services and special provisions to ensure Muslim representation in the legislature. In 1906 when reforms were in the air, a deputation of Muslims under the leadership of His Highness Sir Agha Khan saw the Viceroy and asked for special safeguards if representative government was further extended. Later in the same year the Muslim League was formed at Dacca in East Bengal which had been separated by Lord Curzon from West Bengal, a measure which was keenly resented by the Hindus and had to be undone at the Royal public Durbar at Delhi in 1911.

Twenty years earlier had been founded the Indian National Congress, paradoxically by a British bureaucrat, Sir William Wedder Burn, and membership of it was open to the British Nationals.

The Muslim request for safeguard was conceded in the Minto-Morley Reforms of 1909. The Muslims were given reserved seats

in the legislature, which were to be filled by separate electorates. In the law relating to such reservation of seats and separate electorates some Hindus saw the embryo of future Pakistan. In this they seem to be right because the reservation of seats and separate electorates amounted to an admission that the Mulsims and Hindus are two separate communities. During and after the World War I, the demand for self-government increased in intensity. The Congress received the support of Mahatama Gandhi who had brought with him from South Africa the doctrine of Satyagraha which had succeeded there. While the World War I was still on, on August 20, 1917, the Secretary of State for India, Samuel Montago, made the following historic statement in the House of Commons :

> "The policy of His Majesty's Government with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government as an integral part of the British Empire."

The Government of India Act, 1919 which set up a system of dyarchy, namely classification of subjects into "reserved" and "transferred", continued the system of communal electorates. But the Act did not satisfy the Congress, with the result that Parliament had to pass the famous Government of India Act, 1935. The result of the administration of this Act was that when Congress Ministries were in office in most of the provinces, no Muslim was included in them unless he abandoned the Muslim League and joined the Congress. The Muslim League was thus confronted with a delicate situation. If it joined the Government, it had to depart from the principle which it had hitherto consistently adhered to that it was the sole representative of the Muslims, and if it did not, it must do something else or remain out of power. The question was vital, for an answer to it depended their political and national identity. This decision of the Congress, according to Dr. Ambedkar who was not a Muslim but a Harijan (untouchable), "meant the political death of the Muslims as a free people". In

consequence apprehending their future political death, a large number of Muslims now came out in the open and joined the Muslim League, with the result that the organisation gradually assumed the position of being the sole representative of the Muslim Community under Mr. Jinnah, and its leaders saw no other way of avoiding such death except to demand a separate state. Thus was passed the famous Lahore Resolution of March 1940, which began to be referred to as the Pakistan Resolution which demanded that the areas in which the Muslims were numerically in a majority, as in the north western and eastern zones of India, should be grouped to constitute "independent states" in which they shall be autonomous and "sovereign." The word "Pakistan" was not used in this Resolution, and though it had been coined by Rahmat Ali, the Resolution was not identical with his idea of Pakistan because (1) Afghanistan if by it he meant the Kingdom of that name, was not included. (2) Eastern Zone was included in it, though Rahmat Ali had not even dreamed of including that zone in his conception of the new state.

The rest of the story need not be told except a reference to the Cabinet Mission's Plan which the Muslim League had accepted to keep India united and to acquire practically full control on two Muslim majority regions.

During the World War II, from March 26, 1946 to June 29, 1946, a special Mission composed of three members of the British Cabinet, namely, Lord Pethwick Lawrence, Secretary of State for India, Sir Stafford Cripps, President of the Board of Trade and Alexander, the first Lord of the Admiralty, had visited India to find a compromise formula between the Congress and the Muslim League. Finding agreement between the two impossible, the Mission had put forward its own scheme.

The Cabinet Mission Plan of 16th May, 1946 was a complicated affair but its main feature was obvious to a constitutional lawyer like Mr. Jinnah. According to the Plan, the provision of opting out of the sub-federation had placed Pakistan away 10 years after the elections were held under the constitution. It had rejected Pakistan as an unreality and proposed a federation for India with

three sub-federations, often referred to as groups. For the federation it had reserved the subjects of defence, foreign affairs and communications; all other subjects had to be shared between the sub-federations and their constituent units. The federal constitution was to be framed by a Constituent Assembly which was composed of three sections. Section A was to consist of members, elected on a population basis, from the non-Muslim majority areas, section B of members, similarly elected, from Muslim majority areas and section C of members elected from Bengal and Assam. The Constitution for each sub-federation was to be made by the corresponding section of the Constituent Assembly. Ten years after the first general elections were held under the Constitution so made, any member of the sub-federation could vote to opt out. An interim government with Congress and Muslim members was to be set up at the Centre immediately.

The Plan was accepted by the Muslim League first, because it gave to the units of the sub-federation the option to opt out, and by the Congress a month later. The meeting of the Congress Committee which accepted the Plan was presided over by Mr. Nehru who was then the Congress President. Only three days later, Mr. Nuhru was asked by a press representative whether the Congress had accepted the Plan in its entirety and the reply was that the Congress was entering the Constituent Assembly completely unfettered by any agreement and would consider itself free to meet any situation that might arise. "Does this mean" further asked the questioner, "that the Congress will be at liberty to modify the Plan including the grouping part of it", and the answer was "Yes". With these replies vanished the Cabinet Plan and the last chance of a united India. Startled by this interpretation, the Muslim League withdrew its acceptance of the Plan. Subsequent efforts by Lord Wavel, who was then the Governor-General, to obtain from Gandhi and Nehru the assurance that the Congress was accepting the Plan according to its plain terms and not as the Congress would interpret it, ended with a letter to him from Mr. Nehru that being a soldier he did not understand these legal subtleties and needed a lawyer to make him understand them. But Lord Wavel stuck to his guns and would not

budge. Deadlock followed deadlock until by their influence on the Labour Government the Congress leaders succeeded in having Lord Wavel recalled. Long after this episode I had summed up the position in one of my articles in the following words :

> "Possibly an unthought, more probably a disingenuous reply by Nehru to a pressman's question and a subsequent legal quibble to support it, and an inchoate vision of Pakistan appeared to float on the horizon. Within less than fourteen months it had settled in a tangible form on the world-map, the largest Muslim State and the fifth largest country in the world."

Elections had already been held under the scheme for the 296 seats in the Constituent Assembly which were assigned to the provinces. The Congress had won all the general seats except nine while the Muslim League had won all but five of the seats allotted to the Muslims. "The Muslim League was a virile and homogeneous body and Mr. Jinnah was its leader. He could sway the League this way or that as at this time he was the most important man in Asia." (Beverly Nichols, "The Verdict on India, Dialogue with a Giant").

With the recall of Lord Wavel, the Muslim League had charged that the Mission had played into the hands of the Congress, and in late July it had adopted a Plan of direct action and the Quaid-i-Azam Mohammad Ali Jinnah had declared" :

"This day, we bid good bye to Constitutional methods." This whole episode is explained by an entry in Lord Wavel's Journal, edited by Mr. Penderal Moon, which states that the Cabinet Mission Plan failed because of Cripps' deep commitment to the Congress and that he had informed the British Government that Pakistan was not a mere bluff. This entry receives full corroboration from the circumstances just mentioned.

Lord Mountbatten succeeded Lord Wavel as the Governor-General, and implicit in the fact that the Congress had a hand in the recall of Lord Wavel is the assumption that the Congress had also a voice in the appointment of Lord Mountbatten whom Mr. Nehru had met in Burma when he was in command of the Naval forces there in the World War II. On Nehru's very first meeting with him, Lord Mountbatten had developed for him a regard which during

the partition proceedings manifested itself in Nehru's deep, rather notorious, friendship with Lord and Lady Mountbatten. It was therefore Pakistan's misfortune that Partition had to be effected when Lord Mountbatten had considerable influence on the British Government on whom lay the ultimate responsibility for the division.

India was not a colony but a British possession subject to the British sovereign's full prerogative powers. When full independence for India was decided upon, the Crown had placed its prerogative powers at the disposal of British Parliament and parted with these powers to the extent the Parliament utilized them in framing the Independence Instrument. The Indian Independence Act had created two independent dominions and provided that for the purposes of the Government of each dominion the Crown would appoint a Governor-General who would also have the power to give assent to the legislation of each Dominion. One of these Dominions was to be named Pakistan. Each dominion had the power to secede from the Commonwealth by a properly assented Bill by the Governor-General, Mr. M. A. Jinnah became the first Governor-General of Pakistan.

Chapter II

THE BIRTH OF PAKISTAN

Lord Louis Mountbatten was considered to be the most famous man in England, not only in his own right, as he was an important member of the Royal Household and a successful Commander of the Naval Forces stationed in Burma but also because he was a prominent social figure and had considerable influence on some members of Parliament and the Labour Government. Though there is no evidence of it, he must have accepted the office of Governor-General of India on his own terms and asked for and been promised full freedom in settling the troublesome Indian question.

It has already been mentioned that the Crown had delegated all its prerogative on the Indian possession to the British Parliament so far as it used it in framing the Indian Independence Act. Though Lord Mountbatten kept the British Government informed of the steps that he took in settling the Indian question, the steps taken were his own.

He made the Congress and the Muslim League agree to a partition, and submitted his proposals to the British Government and obtained their approval, with the result that on June 5, 1947, a scheme was announced by which the Punjab was partitioned on a provisional basis. Para 9 of this scheme provided :

> "For the immediate purpose of deciding on the issue of Partition, the members of the Legislative Assemblies of Bengal and Punjab will sit in two parts according to Muslim majority

districts and non-Muslim majority districts as laid down in the Appendix. This is only a preliminary step of a purely temporary nature as it is evident that for the purposes of a final partition of these provinces a detailed investigation of boundary questions will be needed; and as soon as a decision involving partition has been taken for either province a boundary commission will be set up by the Governor-General, the members and terms of reference of which will be settled in consultation with those concerned. It will be instructed to demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. It will also be instructed to take into account other factors".

In accordance with this scheme the legislatures of the Punjab and Bengal having voted for partition the personnel of the Boundary Commission was announced on 9th July. Mr. Justice Mahajan, Mr. Justice Teja Singh, Mr. Justice Din Muhammad and myself were to be its members and Sir Cyril Radcliffe its chairman.

The Chairman reached New Delhi on 8th July and came to Lahore where he presided over a meeting of the Commission. He informed us that he would not be sitting with us and required us to carry on the proceedings ourselves. During the discussion he also informed us that the report which would be submitted to the Governor-General would be his own report, and that no report by a member would be sent up. This was contrary to the procedure and rights of members of the Commission as our position was reduced from that of the members of a commission to that of the spokesmen of the parties. On this Din Muhammad and myself offered to resign as we had lost our right of vote and had been converted from the position of members to the position of mere advocates of parties whom we were representing. Our intention was communicated to higher circles of the Muslim League but we were directed to carry on. Another occasion for us to resign arose when after an interview with Sir Cyril at Simla Mr. Justice Din Muhammad came out with the impression that practically the whole of Gurdaspur with a link to Kashmir was going to India, but we were again asked to proceed with our work.

Much has already been said and written about the Boundary Commission's award. Here I content myself with only a few salient points:

(1) Sir Cyril was thinking of giving Lahore to India because according to him as instructed by his Secretary, Mr. Beaumont, Lahore was not a part of any irrigation system, and on the ground of other factors like factories, workshops and university figures and tax and property returns owned by the Hindus, it was practically a Hindu dominated area. On this I got furious and asked him to go with me to the canal that runs between the city and the cantonment and the water channels that issue from it to make Lahore a city of gardens. As regards the figures of University, workshops, factories and property I told him that this was precisely the reason for partition and his function was not to divide assets. I added that factories and workshops were the result of exploitation of the Muslims by the Hindus.

(2) One of the moot points was Gurdaspur, a Muslim majority district and it became predominantly Muslim area if Pathankot was adjoined to the adjacent Hindu areas to the east. But Pathankot being not exclusively Hindu, the Madhopur Headworks, which would mostly irrigate Muslim majority areas, with the area to the west of it, should be awarded to Pakistan. But the argument had no effect on him and he gave both Gurdaspur and Batala, which had a Muslim majority, to India. Ajnala Tehsil in Amritsar also, which was Muslim area (59.04) he refused to join with the district of Lahore and gave it to India.

(3) There are large Muslim areas on the east of the Sutlej and between the angle of the Beas and Sutlej. When I was about to open the case for these areas, Sir Cyril told me that I need not argue this part of the case as three tehsils of the Ferozepur district namely; Ferozepur, Zira and Fazilka, including the Ferozepur Head Works, and the Muslim majority tracts between the angle of the Beas and the

> Sutlej would go to Pakistan. He must have seen these areas because he gave me a full description of these tracts.

When I saw the award I was horrified. It is a two-paged document with a map on which a boundary line is drawn, dividing not only villages but houses in the same villages. It gives no reasons except for the Ferozepur areas and the tract that lies in the angle of the Beas and the Sutlej which are anything but convincing and contrary to his terms of reference. To link Kashmir with India he does not go by any main physical feature but chooses an insignificant hill torrent which issuing from Kashmir enters the Punjab.

There is conclusive proof, oral as well as documentary, that the award was altered in respect of the Ferozepur tehsils and the areas that lie between the angle of the Beas and the Sutlej. The award was announced on the 17th August, 3 days after Pakistan came into existence, but before that there had been telephonic conversation between Sir Even Jenkins, the Governor of the Punjab, and Mr. Abel, Secretary to the Governor-General, by which the Governor was informed that these areas were being included in Pakistan. The telephonic conversation was accompanied by a letter. And Sir Francis mudie, the Governor who succeeded Sir Even Jenkins, says in a book published in London that on 12th August he was officially informed that the whole of Ferozepur district was being included in Pakistan. And a letter by Mr. Sarup Singh, Chief Engineer, Punjab Irrigation, discloses how the three tehsils of Ferozepur including the Ferozepur Headworks went to India under Lord Mountbatten's influence. A friend has sent to me a cutting of an Indian newspaper in English in which this incident is disclosed and I reproduce what Mr. Sarup Singh says :

"Reference Kanwar Singh's letter, Radcliffe Line, March 12, I think facts can now be disclosed :

> I left Lahore on 8th August and on reaching Ferozepur in the evening learnt to my dismay that three tehsils of Ferozepur district had been allocated to Pakistan in the notional division. This meant the transfer of Ferozepur Headworks and the head reach of the Gang Canal to Pakistan. The seriousness of the

proposal cannot be overemphasised. It spelt disaster both to Eastern Punjab and Bikaner.

I immediately despatched a special messenger to Kanwar Singh who was Chief Engineer, Bikaner, at the time, informing him of the situation.

The late Maharaja Ganga Singh acted very promptly in the matter. He despatched a special messenger to Lord Mountbatten with full instructions as to what to say and when.

Lord Mountbatten was very adamant at first. The emissary then threatened that in that event, however distasteful it might be, it would be necessary for Bikaner to accede to Pakistan as the Gang Canal was its life line. As a result Lord Mountbatten relented and got the award modified.

The delay in the announcement of the award shows that there had been tampering with the original award. The award bears the date 12th August, but it was announced not before the 17th August. The question is why was not the award announced earlier, i.e. before the date of establishment of Pakistan which Lord Mountbatten himself had accelerated to 14th August. The irresistible conclusion is that the award was altered some time between the 12th and 17th August and the alteration could only be made at the instances of Lord Mountbaten. This inference receives support from the fact that when after the conclusion of the arguments Sir Cyril gave a lunch to the members of the Commission on 7th August at the Services Club, Simla, Mr. Justice Mahajan asked him whether after having read the whole record and heard full arguments, he would kindly indicate to the members his own opinion, and the apologetic reply was that he had not made up his mind and will have to consult the Governor-General. If consultation with the Governor-General was considered by Sir Cyril to be necessary, is it beyond expectation that the Governor-General would not suggest to him some alterations in the award ?

In his book "Tehdis-i-Nimat", recently published, Sir Muhammad Zafarullah Khan makes two significant statements:

(1) he refers to a statement by Chaudhary Muhammad Ali, later Prime Minister, that in Lord Ismay's room he saw hanging on

a wall a map with a line which exactly corresponded with the line subsequently drawn on the award and that on being questioned about it he turned pale and said that somebody had been befooling with the map and; (2) that after Sir Cyril was about to fly to see the terrain, a flight that was cancelled due to a storm, Mr. Justice Din Muhammad had seen the Flight plan which he had anyhow got from the pilot and that it was exactly identical with the boundary line drawn on the map attached to the award. These facts show conclusively that the boundary had been determined before the award was made. But I have no personal knowledge of either of these incidents.

And what were these "other factors" which according to the scheme of June 5, 1947 (para 9) the Commission was to take into consideration. Were they mentioned to the parties concerned or to Sir Cyril Radcliffe. The members of the Commission had no idea of them, nor Sir Cyril gave even a hint of them to the members. The words taken with the words "contiguous majority areas" gave to the Chairman a wide and undefined discretion. He could take a factor into consideration and assign to it the importance that he liked, and "contiguous majority areas", in the absence of any definition of the extent of the area, say a district, or a tehsil or a revenue circle, he could take into consideration, as he did, a village or a house or part of a house as contiguous majority area. The line drawn by him, as already mentioned, not only cuts across villages but houses in the same village.

Some people had thought, including the Congress, that the truncated Pakistan would sink under the weight of its own difficulties, economic and political. Beverly Nichols, however, remarks at p. 194 of his book "The Verdict on India" that anyone who approaches the problem with an unjaundiced eye, that Pakistan offers no insuperable difficulties, economic, ethnographic, political or strategic and is likely to prove a good deal easier than a large number of similar problems which the world has successfully resolved in the past fifty years.

The Great Holocaust and Exodus

Pakistan was born in the throes of communal convulsions which preceded and followed its birth. Never had recorded history

witnessed the barbarity, the bestiality, the degradation of man to the level of beasts, the displacement of persons from their homes and the difficulty of finding new homes for themselves, as on Partition, and the hatred it gave rise to between the two Nations who were both claimants to old civilisation.

The estimated figure of death roll because of Partition differs from writer to writer but the exact figure will never be known. According to Pakistan figures as collected, the death roll of Muslims ranges between one and one and a half million and of displaced persons about 12 million. Khosla in his "Stern Warning" puts the number of non-Muslims who lost their life between 2,00,000 and 2,50,000. Moon who was an ICS officer stationed in West Punjab gives the number of killed on each side 1,20,000, while Ian Stephen in his "Pakistan" and Michael Edwards in his "Last Days of the British Raj" give their estimate of casualties as 5,00,000 and 6,00,000 respectively.

The disturbances broke out in March, 1947 in the District of Rawalpindi and the adjoining areas in which the Muslims were the aggressors. I spoke to the Quaid-i-Azam about this telling him that it was a bad augur and that he should either go himself to Pindi or send some responsible member of the Muslim League to assure the minorities that in Pakistan, if it ever was established, they will have equal rights with the Muslims as free citizens of the new States. He agreed with me and though it was before the scheme of 5th June, 1947 was announced or before Partition was decided upon, he replied in a bold and confident manner "let me get into the saddle and you will not hear any non-sense of the kind." However, he ordered Mamdot to go there personally for the purpose.

After the Rawalpindi disturbances, the Sikhs started preparing a plan, called the Sikh Plan, with the cooperation of the Hindus, to exterminate the Muslims in the Punjab. Tara Singh raised his war cry before the Akal Jakht, "Kill or get killed." The Sikh Plan was scientifically prepared and was kept in readiness until the Unionist Ministry resigned. Thereafter, the Sikhs burnt some houses of Muslims and killed the occupants. And then came Partition.

After Partition the smouldering volcano burst into a conflagra-

tion. Hindus and Sikhs in the East Punjab, Muslims in West Pakistan, killed each other as if their victims were no better than animals. Retaliation followed Retaliation till the whole Province turned into a seething cauldron of hate, and humanity, among Muslims and non-Muslims, sank to the lowest depths of degradation and savagery. Forgetting their obvious duty, the Police and the Army allied themselves with their coreligionists and the Sikh Rulers of Patiala, Faridkot and Jhind employed their army to kill Muslims. Escorted caravans and trains proved illusory and unsafe means of transport. Sometimes the whole caravan was practically slaughtered and it arrived in Pakistan with more dead than the living. Abduction and rape flourished on both sides of the border. As the Muslims of the East Punjab had no knowledge of the Sikh preparations, they suffered most in this carnage. Muslim women were paraded naked in the Hall Bazar of Amritsar and hundred of children were transfixed with spears and their bodies were publicly carried on the spikes.

When the evacuation was arranged between the two Governments it was found that Hindus and Sikhs who had stayed in Pakistan were converted and circumcised. Abducted women had been impregnated and given birth to children. The same was the case with Muslims in East Punjab, when the women were evacuated. Some of them left the children thus begotten behind, others carried their children with themselves, but found no place in society.

My elder brothers' family was clean wiped out—14 persons including a Commissioned Officer, girls and school going children. My younger brother, when surrounded by a mob jumped from the roof into a neighbouring house and broke his leg. My eldest brother's son-in-law who was a Deputy Superintendent Jail at Patiala, was ordered to accompany some Sikh prisoners with naked kirpan to a place near Delhi and has not been heard of him since.

Returning from Simla I swore Sir Francis Mudie as the first Governor of West Pakistan and then left for Murree by road. On both sides of the road, as far as the eye could see, fires were burning and people were running helter skelter as if a flood of lava, erupting from a crater, was about to overtake them. Murree was all ashes and ruins and I had to stay in a burnt veranda of a burnt house where I heard the award on the 17th in a radio broadcast.

Chapter III

THE RATIONALE OF PAKISTAN

The obvious reason for the separation from India of the region, that is now called Pakistan, were the irreconcilable difference between the two major communities inhabiting it. The 700 years of Muslim rule had created in the minds of the Hindus an aversion to Musalmans. Even during this long period though unity of India as a country was substantially achieved, the two communities never became one nation.

Manu, the great Hindu Law-giver, had introduced the caste system, dividing Hindu society into two distinct classes (1) the favoured twice born (dojanama) comprising the Brahmans, the Kashatriya and the Vaishas; and (2) the low caste Sudras who were untouchable and had to do every kind of menial work. Though now untouchability has been banned by law and Gandhi mostly lived among the untouchables, naming them as Harijans, the caste distinctions still exist. The Muslims who settled in India hated such distinctions; they believed in equality, irrespective of birth, country of origin, race, creed or complexion.

The two nation theory on which Mr. Jinnah founded his argument for Pakistan does not require any explanation. Beverly Nichols who considered Mr. Jinnah as the most important person in Asia says in his book "The Verdict on India" that in the course of an interview with him Mr. Jinnah had said that the Muslim case could be put in five words "The Muslims are a nation", by reason of their history, their heroes, their art, their architecture, their music, their

laws and jurisprudence being different from those of the Hindus. Questioned further whether he was thinking in terms of religion, his reply was "Partly but by no means exclusively". On another occasion, he said "Islam is not only a set of rituals, traditions and spiritual doctrines; Islam is a code for every Muslim, which regulates his life and his conduct in all aspects, social, political, economic etc. It is based on the highest principles of honour, integrity, fairplay and justice for all. One God, equality and unity are the fundamental principles of Islam." (Fareed S. Jafri, "Pakistan's Growth of Ideology"—VII, Pakistan Standard, January 30, 1955).

Thus two communities were face to face with fundamental differences between them. As the authors of "Major Governments in Asia", Cornell University Press, remark at p. 377 of Chapter XLV of their book that "even though they lived together in one village and might see each other every day of their lives, Hindus and Muslims were never part of one community. They differed in religion, in morals, in diet, in dress, in education and in family laws. They did not eat in one another's house and their children did not intermarry. Under such circumstances, physical nearness bred suspicion, not comradeship". The Hindu by his tradition, history, philosophy, law, deep rooted prejudices, discrimination and intolerance stood quite apart from a Muslim. The great traveller Alberuni, who spent several years in India, sat at the feet of the learned Brahmans to learn Sanskrit and Hindu beliefs and customs, and visited all the important shrines to learn something more from them enumerates the differences between the Hindus and the Muslims in their religious beliefs, modes of worship, social behaviour, customs, language and dress and comes to the conclusion that Hindus and Muslims were two different peoples having nothing in common except that they lived in the same country. On these differences was founded Quaid-i-Azam, M. A. Jinnah's argument of two-nation theory. It will be completely wrong to describe Mr. Jinnah as a communalist. He had been a prominent member of the Congress since the start of his career when he returned from England after completing his education and practising law for some time there. That enchanting songstress of India, Sarojni Naidu, and many others had described

him as the harbinger of Hindu-Muslim unity. In order to keep India united in such a way as to save the Muslims from exploitation by the Hindus he had attended many Conferences, including Lord Wavel's Conference at Simla and the Round Table Conference. Like many other persons he was a member of the Congress as well as the Muslim League. And it is only when he found the differences between the Congress and the Muslim League were irreconcilable and the Muslims were in real danger of losing their culture, which meant their domination by the Hindu, that he agreed to return from England in 1934 to lead the Muslim League in its struggle with both the British Government and the Congress. His Lucknow Pact, 14-point rejoinder to Nehru's Constitutional Reforms and his agreeing to discuss matters with Gandhi, though nothing came out of this interview, all this shows that he was willing to compromise if by so doing he could save the Muslim interests. The Lucknow Pact is important in this that the Congress had agreed to separate electorates which amounted to an admission that Muslims were a separate community and therefore the best course for the British was to divide and quit.

When Indian Ministries were in office under the Government of India Act 1935 (1937-1939), no Muslim was taken in the Ministry unless he abandoned the Muslim League and joined the Congress. Dr. Ambedkar, spokesman of the untouchables, described this decision as "the political death of the Muslims as a free people." Having watched the administration of these Congress ministries, the Quaid-i-Azam became more inflexible, had the Lahore Resolution passed by the Muslim League and in the subsequent critical days he became so obdurate over the issue of Pakistan that the Congress and the Viceroy had to abandon all hopes of any change on his part. He was the President of the Muslim League which was a virile and homogeneous body and the sole representative of the Muslims. He was in a position to sway the Muslims in one way or the other. Among the Hindus there were several capable leaders. "If Nehru died there was Rajgopalacharia or Patel to take his place. But if Jinnah goes there was no one to replace him. And without him the League could completely run off the rails and charge through India

with fire and slaughter. But so long as Jinnah was there, nothing like that would happen".

(Beverly Nichols, "The Verdict on India").

Though the correctness of the theory of two-nations, which the Quaid-i-Azam made the foundation of his argument, is no longer in dispute, it will repay going back to near the end of the 19th century and to refer to a statement by Sir Syed Ahmad Khan which contains the argument for the political separation of a part of the sub-continent. Half a century before the Muslims raised their demand for a separate state in a formal Resolution, this far-seeing statesman had said :

> "Now suppose all the Englishmen were to leave India, then who would be the rulers of India? Is it possible that under these circumstances two nations—Muhammadans and Hindus—could sit on the same throne and remain equal in power. Most certainly not. It will be necessary that one of them should conquer the other and thrust it down. To suppose that both could remain equal is to desire the impossible and the inconceivable". (Richard Simonds, "The Making of Pakistan," 3rd ed. London, Fisher & Fisher, 195, p. 31). Compare these words with what the Quaid-i-Azam himself said :
>
> "We are opposed to a united India Constitution with a Central Government, Federal or otherwise. We are opposed to this because it will mean our transfer from the British Raj to the Hindu Raj. United India means a Hindu social and cultural majority dominating the Muslims whose civilization, culture and social structure of life is totally different." (Jamil-ud-din Ahmad, "Some Recent Speeches and Writings of Mr. Jinnah," published by Shaikh Muhammad Ashraf, Lahore, 1947, p. 380).

It should be clear from what has been said above that the object of the struggle for Pakistan was for Musalmans to escape from the domination of the Hindu and fear of the destruction of their specificity, or of their absorption in the Indian nation. This object could only be attained if the Muslim succeeded in obtaining for themselves a territory over which they could set up their own Government. That is why the independence instrument, the Indian Independence Act, gave to both dominions full control over their

affairs, including the right to secede from the Commonwealth and thus destroy all vestiges of a British connection. Though such were the powers of both the dominions, each new state accepted the status of a British dominion and thus retaining its connection with the British Crown by accepting a provision that the Crown would be represented by a Governor-General to represent the Crown for the purposes of the Government of the dominion and to give assent on behalf of the Crown to the dominion legislation. The Act said nothing about the future form of Government or Constitution which it left to a Constituent Assembly which could frame any constitution for the country it liked. But to begin with, the Act, provided that each dominion would be governed under the Government of India Act, 1935, from which all vestiges of British sovereignty except the royal assent were removed. Thus Pakistan could make any constitution it liked, democratic, autocratic, oligarchic or religious. The whole issue on which the battle was fought was that of territorial independence of Muslims majority areas and their power to legislate for such areas.

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Chapter IV

IDEOLOGY OF PAKISTAN

Ideology means the science dealing with the beliefs, notions and theories growing out of fundamental assumptions held by the members of a group; sometimes the member makes a conscious effort to acquire the right kind of idea; more often he accepts them unconsciously.

The concept of ideology arose in Europe as a result of the conflict of various systems of thoughts. It has found use as a means of discounting the arguments of an opponent as reflecting merely the conceptions or prejudices of his group. Thus Karl Marx argued that much religious and political thinking was ideological and served to protect capitalism.

Ideology, which is now a common word in English, is not used with reference to a country. I heard this word for the first time in 1953 when I was holding an inquiry into the Punjab Disturbance of that year and I formally incorporated it in the report regarding the three demands against the Ahmadies which were founded on the Objectives Resolution. Thereafter when I was a member of Ayub's Cabinet in 1962 and the Political Parties Bill was under discussion a person moved an amendment to the bill proposing that no party would be formed the object of which was opposed to the 'Ideology of Pakistan'. On this Chaudhry Fazal Ilahi who has recently retired as President of Pakistan, rose from his seat and objected that then "Ideology of Pakistan" shall have to be defined. On this

the member who had moved the original amendment replied that the ideology of Pakistan was 'Islam', but nobody asked him the further question "What is Islam?" The amendment to the bill was therefore passed as the member who supported the amendment was Maulvi Abdul Bari of Lyallpur who was a supporter of Ayub. Nobody can say anything to the contrary where Islam is mentioned.

Ayub was then in Karachi and I could not contact him. When he returned I mentioned to him the incident and he remarked "What will the world say about it all".

A girl, named Mahwash, who is the daughter of a high officer at Islamabad and had stood first among the girl students in 1977 B. A. Examination, in the course of an interview with the representative of "Nawai-Waqat," had stated in reply to a question, whether in her view education should also be subjected to an ideology. Her reply was that the subordination of education to any ideology is to destroy the purpose of education. It was a correct reply if you understand the aim of education and the meaning of ideology. The object of education is to acquire knowledge, knowledge of everything, of the Universe, the remotest nebula, the dark spot of dead stars millions of light years beyond Pluto, light travelling at the speed of 1,86,000 per second, the mightiest of galaxies to the smallest particle of matter, knowledge of all that exists in the universe, the stars, the planets, of everything living or not living on earth, including man in all his activities and all life that is found on earth. The Quran emphasises the acquisition of knowledge even if you have to go to China for it. "Seek knowledge from the cradle to the grave" is another great saying of the Prophet. In fact knowledge is a primary religious obligation of a Muslim. The Quran constantly urges Muslims to study nature, to investigate things to find out for themselves the order with which God has created the universe. But knowledge has no limits. According to Franz Rosenthal's "Knowledge Triumphant, The Concept of Knowledge in Medievel Islam," (pp. 46-49) the various banches of knowledge had reached 150, according to another account of the 14th century it had jumped to 316. Now if you subordinate the acquisition of knowledge to any ideology, political, economic or religious, you reduce

the field of knowledge to what the ideology teaches you because the ideology has to run through a groove or a defined channel and does not let you go out of it. Therefore it imposes limitations on human intellect and on your activities.

To take an example, it used to be a Christian dogma for centuries that the centre of the planetary system is earth. Copernicus showed that the centre of that system is not earth but the sun and that the earth revolves round the sun. Galileo further illustrated this theory, but for this he was placed before an Inquisition tribunal for having propounded a theory which was opposed to the Christian ideology. Similarly the Christian belief used to be that the age of the creation of man is 4,004 years before Christ but Darwin and other scientists exploded this theory by scientific experiments by which it was shown that homo sapiens (man) inhabited the earth some 35,000 years ago. Now it has been found that man lived back half a million years—in the time of "Peking man".

Similarly I recently read the view of a Muslim contributor either in the "Nawai-Waqt" or some other Urdu Journal that students of geography should be taught that the earth is stationary and he claimed to have arrived at this result from some verses of the Quran. Some old commentaries on the Quran place this globe on the horns of an ox whose shifting it from one to the other causes earthquakes. It is further standing on a fish. The embellishment of the worldly heavens by the candles of the stars is another instance which the reader is asked to take literally. Now if an undergraduate comes across such passages he finds himself on the horns of a dilemma. He is commanded to believe them literally, ("Ever Universal Religion" by Muhammad Hussain Khan, p. 280) and not figuratively. There are certain verses in the Quran from which it may be inferred that the earth is stationary and flat like a floor and that the sky is material. (Hali, "Hayat-i-Javed", 590). Other instances may be cited where the facts established by science may apparently bring the believer into conflict with what he believes, ultimately leading him to the old controversy between the Motazalites and the Asharites, between reasoned thought and blind faith. Ideally, one school, the traditionalists, believe no knowledge should be taught except that based

on the affirmation, "God has said" and "The Prophet has said". This shows that every kind of ideology restricts the field of human knowledge and man's belief in any such ideology makes the society with such ideology static in a constantly changing world.

The Socialist and Communist countries have an ideology but that ideology places no restrictions on science, and as regards their economic and political ideology there is a large number of dissenters who leave the country rather than accept restrictions which the regime imposes on them.

The Quaid-e-Azam never used the words "ideology of Pakistan" but during the inquiry into the Punjab Disturbances I used the words "Ideology behind the demands" to explain the three demands against the Ahmadies. For fifteen years after the establishment of Pakistan, the Ideology of Pakistan was not known to anybody until in 1962 a solitary member of Jamaat-i-Islami for the first time used the words when the Political Parties Bill was being discussed.

Chapter V

CHANGE OF IDEOLOGY

The pattern of Government which the Quaid-i-Azam had in mind was a secular democratic government. This is apparent from his interview which he gave to Mr. Doon Campbell, Reuter's Correspondent in New Delhi in 1946, in the course of which he had said:

> "The new state would be a modern democratic state with sovereignty resting in the people and the members of the new nation having equal rights of citizenship regardless of their religion, caste or creed".

His speech as President of the Constituent Assembly on 11th August, 1947 is one of the clearest expositions of a secular state. It is a long and considered speech meant not only for the citizens of Pakistan but for the outside world. A few relevant extracts from it are reproduced below :

"All the same in this division it was impossible to avoid the question of minorities being in one dominion or the other. Now that was unavoidable. There was no other solution. Now what shall we do. Now if you want to make this great state of Pakistan happy and prosperous we should wholly and solely concentrate on the well-being of the people, and especially of the masses and the poor. If you will work in cooperation forgetting the past, burying the hatchet, you are bound to succeed. If you change your past and work together in a spirit that everyone of you, no matter to what community he belongs, no matter what relations he had with you in

the past, no matter what is his colour, caste or creed, is first, second and last a citizen of this State with equal rights, privileges and obligations, there will be no end to the progress you will make.

"I cannot emphasise it too much. We should begin to work in that spirit and in course of time all these angularities of the majority community—the Hindu community and the Muslim community—because even as regards Muslims, you have Pathans, Punjabies, Shias, Sunnies and so on. Among the Hindus you have Brahmans, Vaishnavites, Khatries, also Bengalies, Madrasies, and so on—will vanish. Indeed, if you ask me this has been the biggest hindrance in the way of India to attain its freedom and independence and but for this we would have been free people long ago. No power can hold another nation, and especially a nation of 400 million souls in subjection; nobody could have conquered you, and even if it had happened, nobody could have its hold on you for any length of time but for this. (Applause). Therefore we must learn a lesson from this. You are free, you are free to go to your temples. You are free to go to your mosques or any other place of worship in this state of Pakistan. You may belong to any religion or caste or creed —that has nothing to do with the business of the State (Hear, hear)..........

"We are starting in the days when there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed or another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State (Loud Applause).

........"Now I think you should keep that in front of us as our ideal, and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual but in the political sense as citizens of the State".

In his broadcast to the people of Australia on 19th February, 1948 he had said that Pakistan was not going to be a theocracy and he repeated this in his broadcast to the United States. But the broadcast to the United States he had prefaced with the following words, "I do not know what the ultimate form of the constitution is

going to be, but I am sure it will be of a democratic type embodying the essential principles of Islam. Today they are as applicable in actual life as they were 1,300 years ago. Islam and its idealism have taught us democracy. It has taught equity, justice and fairplay to everybody. We are the inheritors of these glorious traditions and are fully alive to our responsibility as framers of the constitution." Similarly in his broadcast to the people of Australia he had explained what these principles were in the following words:

"We follow the teachings of Muhammad—may peace be on him—in which all are equal in rights, dignity and self-respect. Consequently we have a special and very deep sense of unity. Not only most of us are Muslims but we have our own history, customs and traditions and those ways of thought, outlook and instinct which go to make up a sense of nationality. We wish to live in peace and friendship and to work out our destiny in our own way and make our rightful contribution to the affairs of the world".

In his address to the Civil and Military Officers of Karachi on October 19, 1947 he had described the new state as one in which "we can live and breathe as free men and which we could develop according to our own lights and culture and where principles of Islamic social justice could find free play".

In his speech at a public meeting at Chittagong on March 26, 1948 he had agreed with the statement that Pakistan should be based on sure foundations of social justice and Islamic socialism which emphasises equality and brotherhood of man.

In his Eid Message to the nation on August 18, 1947 he had expressed the hope that the "Eid would usher in a new era of prosperity and mark the onward march of Islamic culture and ideals." For the nation he had summed up the lesson of unity, faith and discipline.

And at a public meeting in Dacca held on 21st March 1948 he had said :

"Islam has taught us this, and I think, you will agree with me, for whatever else you may be and whatever else you are, you are a Muslim. You belong to a nation now. You have carved out a

territory, a vast territory, it is all yours. It does not belong to a Punjabi or a Sindhi or a Pathan or a Bengali, it is yours. Make no mistake: Pakistan is not a theocracy or anything like it. Islam demands from us the tolerance of other creeds and we welcome in closest association with us all those who of whatever creed are themselves willing and ready to play their part as true and loyal citizen of Pakistan". (Javed Iqbal, "Ideology of Pakistan", pp. 3 & 4). The word "now" should remind a Muslim that a Muslim State or nation was first founded in Medina, when the Muslims had a territory, a law giver, an interpreter and administrator of law when the Holy Prophet set out and won the battle of Badar, though revelation had begun some ten years earlier. The word "now" in this speech of the Quaid-i-Azam is very significant, since it refers to the establishment of a territorial state. Secularism was once derided by the orthodox Muslims but is now considered to be an integral part of Islam. Says Mr. and now Mr. Justice Javed Iqbal son of Allama Iqbal, "Islam does not recognise the distinction between the "spiritual" and the "profane." According to Islam the spiritual and temporal obligations are not only connected with each other but it is incumbent on every Muslim to constantly endeavour to realise the spiritual values while performing the temporal obligations. Hence secularism is an integral part of Islam and it is for this reason that the Islamic State assimilates the qualities of an ideal secular state". (Javed Iqbal, "Ideology of Pakistan", p. 4). It is clear from these statements of the Quaid-i-Azam :

1. That he was opposed to a theocratic government.
2. That he wanted a secular democratic government.
3. That there was to be one nation, the Pakistani nation, regardless of the individuals' creed, religion and sect; that religion would be an affair of the individual and will have nothing to do with the administration of the State.
4. That such government was to be based on Islamic principles and traditions.
5. That by Islamic principles he understand a society based on social justice, equality and brotherhood of man, tolerance, equity, justice and fairplay. He used the words Islamic

socialism but they were used in their pragmatic sense, not in their doctrinaire sense.

The Quaid-i-Azam had not even imagined that there would be communal carnage and cross-migration on such a scale as actually took place. He was confident that the non-Muslims would willingly accept the citizenship of the new State, as it was to be founded on principles which nobody, whether a Muslim or non-Muslim, could deny. In fact I was myself waiting for the day when I could demonstrate the Islamic principles of justice that a Muslim judge should do justice and not be influenced by the enmity of a party and acting on this injunction I acquitted several Hindus who had been wrongly convicted by a Muslim Special Judge and confirmed the death sentence of several Muslim accused who had murdered a Hindu widow who had decided to stay in Pakistan.

After the Rawalpindi disturbances and Mamdot's visit to the troubled areas there was a lull in the frenzied communal clashes. If there had been no cross-migration and indiscriminate slaughter and the non-Muslims had stayed on in West Pakistan they would have had a percentage of 30, and there would have been no question of making them inferior citizens in a religious state. This view was supported by no less a person than Maulana Abul Ala Maududi. In the "Tarjuman-ul-Quran" of February 1946 he had opposed Pakistan on the ground that if it was established it will be a secular state and not an Islamic State. In the course of the inquiry into the Punjab Disturbances of 1953 he was questioned on this point and his replies to the question are reproduced below from the record of the proceedings :

Q. Are you in favour of having an Islamic State now?

A. Certainly.

Q. Did you express an opinion to the contrary in the "Tarjuman-ul-Quran" for February 1946 (Relevant passage read out to the witness).

A. I did express this opinion in the "Tarjuman-ul-Quran" but that was on the basis of what was being presented to us then. Now the conditions are different and we can have a purely Islamic State.

Q. How have the conditions changed?

A. As was then anticipated, western Pakistan was to include at least 26 p.c. of non-Muslims. They have now left and we have in West Pakistan a completely Muslim population. The percentage of non-Muslims in East Pakistan has also decreased.

Q. If East Pakistan were a separate State do you think you could have a purely Islamic Government in that region with the present Hindu population.

A. There will be difficulties there, the percentage of non-Muslims there being about 25.

Q. If East Pakistan is a necessary part of Pakistan, then how do you say that conditions have changed and that a purely Islamic Government can be formed for the whole of Pakistan.

A. The difficulties have now lessened. (Pages 141-142 of the Record).

If the non-Muslims had not willingly left or been driven out of Pakistan, was not the Quaid-i-Azam view expressed in his speech of 11th August, 1947 completely in accord with Maulana Abul Ala Maududi's view?

The conclusion that has to be drawn from what has been said above is that the aim of obtaining a Muslim majority area and establishing therein a government of the majority was no more than freedom from Hindu domination and running their own government in that area. That the object was to establish a religious state in that region was neither in Quaid-i-Azam's mind nor in that of Allama Iqbal. But of course implicit in the Constituent Assembly's power was the right to frame any kind of constitution it liked and the Governor-General gave his assent to such Constitution Bill. But so far as the Quaid-i-Azam is concerned he was strongly in favour of a modern secular constitution. And if during the Quaid-i-Azam's life, Khan Liaquat Ali Khan, the Prime Minister, had even attempted to introduce the Objectives Resolution of the kind he got through the Assembly on 25th March 1949, the Quaid-i-Azam would never have

given his assent to it. The real object of the Quaid-i-Azam was to save the Muslim majority areas from the political domination of the Hindus as well as to save them from economic exploitation of the kind that emerged from the facts and figures given by the Congress and the Sikhs in claiming the inclusion of Lahore in India before the Boundary Commission. Another object, perhaps a more important one, was to preserve the identity of Musalmans but what was this identity? Had it to be defined or taken as it was at the time of the partition? Underlying the speech of the Quaid-i-Azam is the economic objective—raising the standard of living of the mass man who was grinding under poverty because partly for lack of self-help and partly his exploitation by the Hindu, he was a pitiable human being, and his lot could be improved if the Muslims of the majority areas had their own government. Thus the primary object of establishment of Pakistan was the self-government of the territory in which the Muslims would have a majority and could show to the minorities how just and equitable that Government was. But theocracy in any form he had expressly ruled out.

The Quaid-i-Azam had been suffering from a mortal disease and had been advised to avoid strain. Nevertheless he worked ceaselessly and despite all the disadvantages that were incidental to putting the new State on the rails carried on the administration with vigour and enthusiasm. Consistently with his conception of a secular state he even appointed a Hindu (Mandal) as a member of his cabinet. He was in the tertiary stage of the disease and when he felt too weak to carry on he went for a rest to Ziarat where his health further deteriorated. I saw him when from Ziarat he came to Karachi for the inauguration ceremony of the State Bank. With his sister by him he was riding a four-horsed carriage with an enormous procession following him. His complexion had become pale and he had lost weight. He appeared to be a sick man but there was a smile on his face, though underneath this apparent cheerfulness one could discover a mental anxiety. After the ceremony he returned to Ziarat but the disease had the better of him and he breathed his last on 11th September, 1948 and was buried in the midst of a sobbing crowd in the place where his mausoleum stands today. Neither any mem-

ber of the Jamaat-i-Islami, of Jamiatul-ul-Ulama in Islam, nor any Khaksar was there.

In his death Pakistan lost a great leader and the founder of a new State.

After this Khawaja Nazimuddin became the new Governor-General and Liaquat Ali Khan continued as the Prime Minister.

On 25th March, 1949, Khan Liaquat Ali Khan moved in the Constituent Assembly a Resolution which is called as the Objectives Resolution. If the Resolution had been moved in the lifetime of Quaid-i-Azam and had been endorsed by him much of the confusion that appeared subsequently would have been avoided. But Liaquat Ali Khan knew that the Quaid-i-Azam would not agree to any such Resolution as it was directly opposed to the views he had publicly expressed more than once, and it was a complete contradiction of his idea of a modern democratic secular state. After the Quaid-i-Azam's death Liaquat Ali Khan waited for six months before he moved that Resolution which was unanimously passed by the Muslim members, the Hindu members having boycotted the session.

When the terms of this Resolution are examined it is found to differ in all the basic points of the Quaid-i-Azam's views e.g.

1. The Quaid-i-Azam had said that in the new state sovereignty would rest with the people. The Resolution starts with the statement that sovereignty rests with Allah.
2. There is a reference to the protection of the minorities, of their right to worship and practice their religion, whereas the Quaid-i-Azam had stated that there would be no minorities on the basis of religion.

From the sovereignty of Allah and the legislature acting within prescribed limits, is negatived the basic idea of modern democracy that there are no limits, except in a federation, on the legislative power of a representative Assembly.

3. The distinction between religious majorities and minorities takes away from the minority the right of equality which again is a basic idea of modern democracy.
4. The provision relating to Muslims being enabled to lead their life according to Islam is opposed to the conception of a secular state.

5. The Objectives Resolution differs from the Lahore Resolution in which two "Sovereign" states were demanded.

It was natural that with the terms of the Resolution the Ulama should acquire considerable influence in the State. There are 73 sects in Islam but leaving aside the Shias who stand apart, among the Sunnies of India there were different schools of thought who were calling one another as Kafir before Partition. These Ulama had their own institutions at Deoband, Bareli, Nadva, Badayun, Qadian, Pathankot, Amritsar etc. They were engaged in religious discussions and disputations but the British looked at them with indifference. In fact they encouraged such disputes and interfered only when a law and order question arose. The most prominent among them were the Ahrar who at first were Congressites and later became nationalists, and thereafter coming to Pakistan they became a religious party. Most of these sects were against the conception of Pakistan, the Quaid-i-Azam and the Muslim League. One of them had called the Quaid-i-Azam Kafir-i-Azam and another member of another organisation (the Khaksar) made an attempt on his life. The Khaksar organisation was founded by Inayatullah Khan Mashriqi who was my colleague at the Peshawar College. He was the first Indian who became Headmaster of the Government High School at Peshawar and subsequently became an Under Secretary in the Indian Government at Delhi. He suddenly resigned from that office and founded the Khaksar organisation which was based on the Nazi pattern, I say Nazi pattern, because Sir Sikandar Hayat Khan who was the Chief Minister of the Punjab, showed me the pictures of their parades with Nazi helmets and sharp edged belchas with which they used to parade in the streets. Once they marched in defiance of an order under Section 144 and when an English Deputy Superintendent of Police stopped them from proceeding further, their Salar told him that he had orders to proceed and remove any obstruction in his way. When the Deputy Superintendent said that he could not proceed further and put his hand on his chest, the Salar gave a terrific blow on his head with his belcha, disabling him. If I remember aright the name of this Deputy Superintendent was Mr. Beaty. When the Khaskar proceeded further to near Nowgaza they were massacred.

Those who concealed themselves in the nearby houses, were brought out one by one and shot. This was a few days before the Lahore Resolution was moved in the Muslim League. The hypocrisy of the leader of one of these sects can be judged by the fact that although he himself was a Shiah he went to Lucknow to support the Madha-i-Sahaba movement, an essentially Sunni tenet, just with the object of showing that Muslim League was not supporting the movement. The leaders of two other sects used vulgar names for Pakistan, one calling it Palidistan (profane place) and the other Na-Pakistan.

When Pakistan appeared on the map, they found no place for themselves in India and they all came to Pakistan and brought with them the curse of Takfir (calling one another infidel).

But Jamia-Millia, the Jamiat-ul-Ulama-i-Hind who believed that Muslims could be faithful citizens of India remained behind. Maulana Azad whose study of Islam was as deep as that of Maulana Abul Ala Maududi and who by conviction was a nationalist and was therefore opposed to Quaid-i-Azam also stayed in India.

The leading part in this Takfir was taken by the Ahrar and their first target were the Ahmadies. They demanded that the Ahamdies (Qadianies) should be declared a minority as they were outside the pale of Islam, that Sir Muhammad Zafarullah Khan who was an Ahmadi should be relieved of his office and that in future no Ahmadi should be taken on a key post. Soon they gathered the other Ulama round themselves and some conferences of these Ulama were held. Ultimately a Council of Action was organized which was attended by all parties, and an ultimatum containing the three demands was decided upon to be presented to Khawaja Nazimuddin, who was then the Prime Minister. The campaign against the Ahmadies had assumed such a virulent form, that several Ahmadies were attacked and killed and their Masjids and property burnt, destroyed or looted. One of the persons killed was Major Mahmood, an Ahmadi, whose car had failed near a crowd which was being addressed by a Maulvi at Quetta on the subject of Ahmadies being Kafirs. Major Mahmood was trying to start his car when he was attacked by a furious mob. He ran but was overtaken and his body was pelted with stones and pierced with sharp weapons.

The Punjab Muslim League had accepted the demands and many Muslim Leaguers whose government was in office had joined the agitation. While accepting their demands the Chief Minister of Punjab had informed the deputationists that the matter was for the Centre to decide on constitutional grounds as well for the reason that the Head office of the League was at Karachi.

The Council of action went to Khawaja Nazimuddin, and though I think, he had on religious grounds sympathy with the movement, he was confronted with the situation that either he should accept the demands or as Prime Minister treat the ultimatum as a challenge to law and order which as Prime Minister he was bound to maintain. He chose the latter alternative and ordered the arrest of the agitating Ulama. With these arrests, began the disturbances throughout the Punjab and the situation soon went out of control of the civil authorities. Martial Law in Lahore was therefore declared.

he Punjab Muslim League had supported the demands and many Muslim Leaguers whose government was in office had joined the agitation. While conceding their demands the Chief Minister of Punjab had informed the deputationists that the matter was for the Centre to decide on constitutional grounds as well for the reason that the Head office of the League was at Karachi.

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Chapter VI

EFFECT OF CHANGE IN IDEOLOGY

After the disturbances of 1953 had subsided and Martial Law withdrawn, a special Act was passed constituting a court of Inquiry to investigate the causes of disturbances, the circumstances leading to the imposition of Martial Law and the adequacy or otherwise of the measures taken to suppress the disturbances. The inquiry was to be a public inquiry and I was nominated the President of the Committee and my friend Mr. Justice Kayani its member. It was a lengthy inquiry but quite a pleasant and interesting task. We commenced the inquiry on 1st May 1953 and presented our report to the Government on 10th April, 1954. I am not a religious scholar but I had studied Islam as an evolutional movement in the history of humanity, its contribution to the world and its broad and universal principles. But here I was face to face with religious doctors whose study was confined to the books written about 800 years ago and which were claimed by them to contain the solution of every problem in the world. The record of the inquiry was colossal, and consisted of 1600 pages of written statements, 2,600 pages of evidence, 339 formally proved documents, numerous letters some of which exceeded 100 pages and a host of books, pamphlets, journals and newspapers. The report itself covers 387 closely printed pages. In the course of inquiry almost every conceivable subject was touched and the issues underlying the inquiry, which frequently emerged in all their directness and with all their implications, were so deep and fundamental that a reply to them one way or the other could make

or mar the new State of Pakistan and entirely change the course of her future history. Now neither this report nor the record of proceedings is available. I had asked the stenographer to prepare a spare copy of the proceedings but among my papers only the first volume of the proceedings upto page 843 has been found. All our predictions expressed or implied in the Report have come out true, and there is not a single question touched in it which did not subsequently arise in Pakistan, one of the issues being a burning issue even today. There is hardly any book written on Pakistan which does not refer to this report which has come to be called "Munir Report". When the report was published it was commented upon by every paper in Pakistan, some important papers in India, a paper in England and another in Australia. Professor Hitti wrote a personal letter to me and later when he met me said that he was expecting some such thing from Pakistan. A professor from Canada wrote to me saying that he was recommending the report to his students for summer reading.

During a conversation with the Shahanshah of Iran, he inquired from me about the purport of the Report and I told him what the report was about. He remarked that there were similar problem in his own country and the very same day the Punjab Government obtained from me a copy for His Majesty's perusal. Iran had faced similar problems in the past in the days of Ali Muhammad Bab, Bahaullah and the beautiful poetess Qurrat-ul-Ain.

It also witnessed the Revolution of 1961 when Doctor Mosaddiq drove the Shah out of Iran. Now the religious leader of Iran Ayatullah Rohullah Khomeni, who was banished from Iran and stayed in Paris for 15 years, has returned to Iran and established an Islamic Republic there and the Shah and his Queen are refugee in Mexico. Many heads, who had supported the Shah, have rolled.

A "great document", a "historical document" were the usual headings of newspaper comments on the report, and I still have a full box of letters and newspaper comments, including some by 'Nida-i-Waqt', predecessor of 'Nawa-i-Waqt', received in appreciation of this document. Among these letters there is one by Mr....... dated 13th May, 1954. He wrote to me saying:

"Being very closely associated with the Quaid-i-Azam since 1936, until his demise, I have learnt at his feet lessons which I shall never forget. He was by any standard of measurement, a very great man. His vision was as clear as crystal and his guidance superb. His utterances, public and private, did not leave one with the slightest doubt that he was a progressive man and that he wanted a progressive Pakistan where people lived and worked in accordance with the highest and noblest principles of Islam, namely, equality, fraternity and justice. I swear he did not at any time envisage the creation of a backward theocratic state, Islamic in name and totally un-Islamic otherwise. He did not create Pakistan to put on the map a state which should live in the clouds of pre-medievalism sliding backward instead of marching forward, and in indecent haste to slide in the nether depths of degradation and theocracy equalling Tibet. Why Pakistan has been called before now the "Land of the Lamas" minus the long and hideous trumpets? As a sincere follower of the Quaid-i-Azam I congratulate you and your colleague for your magnificent Report on the Punjab Disturbances. I have studied it with deep interest and hope the gentlemen who are entrusted with the responsibility of running our state will study it, take your words to heart and implement your advice."

"I hold that those who are endeavouring to set the hands of the clock back a thousand years and are using the cloak of Islam to cover their own shortcomings and sins are committing an unpardonable crime not only against society but against Islam."

"I congratulate you again from the depth of my heart for expressing yourself so clearly and forcefully."

One journalist in his comments remarked that there were only two books which he had not laid aside until he had read them from the beginning to the end. One of these was Lady Chatterley's Lover and the other the Munir Report. (What a comparison?)

There was then no criticism of this report except by Jamaat-i-Islami to whom we had assigned a part in the responsibility for the disturbances. The head of that Jamaat had been, together with Abdus Sattar Niazi, sentenced to death by a Military Court but the sentences were not executed.

In some of the letters received by me its literary value has been appreciated.

Here are some extracts from the Report. The Report ends with the following sentences :

"And it is our deep conviction that if the Ahrar (the leading party) had been treated as a pure question of law and order, without any political considerations, one District Magistrate and one Superintendent of Police could have dealt with them. Consequently we are prompted by something that they call a human conscience to inquire whether in our present state of political development, the administrative problems of law and order cannot be divorced from a democratic bed-fellow called a ministerial Government which is so remorselessly haunted by political nightmares. But if democracy means the subordination of law and order to political ends—then Allah knoweth best and we end our report."
(Can you not apply these observations to our recent past?)

When the Chief Minister of the Punjab diverted the course of the movement to Khawaja Nazimuddin, Prime Minister, the latter had remarked that the former had required him "to hold the baby". Now read the court's prediction :

"In his evidence Khawaja Nazimuddin has used a very apt simile while complaining that the Chief Minister of the Punjab wished him to hold the baby. If the demands be compared to a baby, the whole subject of responsibility can be put into a single sentence and that is that the Ahrar gave birth to a baby and offered it to the Ulama for adoption who agreed to father it, and that anticipating that the baby would cause mischief if it grew up in the province, the Chief Minister cast it in a canal, dug with the assistance of Mir Nur Ahmad and watered by the press and the Chief Minister himself, to flow down Moses like to Khawaja Nazimuddin.

"Khawaja Nazimuddin, in the apparent good looks of the baby noticed a frown and something indefinably sinister and therefore refusing to take it in his lap threw it away, with the result that the baby kicked and raised up a row which enveloped the province of its birth and threw both Khawaja Nazimuddin and the Chief Minister out of office. The baby is still alive and kicking and waiting

for someone to pick it up. And in this God-gifted State of Pakistan there are careers for everybody—political brigands and adventurers, even non-entities". (p. 286 of the Report). And we know that some 20 years later no less a person than Mr. Bhutto took up the baby in his lap and by a constitutional amendment declared the Ahmadies non-Muslims. But even he could not define a Muslim and discarded the simple definition which before the Partition eminent Muslim Judges of different High Courts and the Privy Council had given. Has anyone since then defined a Muslim and how many political brigands, adventurers and non-entities have not carved for themselves a career in Pakistan.

"Keeping in view the several definitions of a Muslim given by the Ulama, need we make any comment except that no two learned divines are agreed on this fundamental. If we attempt our own definition as each learned divine has done and that definition differs from that given by all others, we unanimously go out of the fold of Islam. And if we adopt the definition given by any one of the Ulama, we remain Muslims according to the view of that alim but kafirs according to the definition of every one else." (page 218 of the Report).

APOSTASY AND FREEDOM OF CONSCIENCE

"If the Ahmadis were kafirs, any one becoming an Ahmadi, became liable to the death penalty because apostasy in an Islamic State is punishable with death. On this the Ulama are practically unanimous (vide the evidence of Maulana Abul Hasanat Sayyed Muhammad Ahmad Qadri, President, Jamiat-ul-Ulama-i-Islam, West Pakistan; Maulana Abul Ala Maudoodi, founder and ex-Amir of Jamaat-i-Islami, Pakistan; Mufti Muhammad Idris, Jamia Ashrafia, Lahore and Member, Jamiat-ul-Ulama-i-Pakistan; Maulana Daud Ghaznavi, President, Jamiat-i-Ahl-i-Hadith, Maghribi Pakistan; Maulana Abdul Haleem Qasimi, Jami'at-ul-Ulama-i-Islam, Punjab; and Mr. Ibrahim Ali Chishti). According to this doctrine, Chaudhri Zafrullah Khan, if he has not inherited his present religious beliefs but has voluntarily elected to be an Ahmadi, must be put to death. And the same fate should befall Deobandis

and Wahabis, including Maulana Muhammad Shafi Deobandi, Member, Board of Talimat-i-Islami, attached to the Constituent Assembly of Pakistan, and Maulana Daud Ghazanvi, if Maulana Abul Hasanat Sayyed Muhammad Ahmad Qadri, or Mirza Raza Ahmad Khan Barelvi, or any one of the numerous Ulama who are shown perched on every leaf of a beautiful tree in the fatwa, Ex.-D. E. 14, were the head of such Islamic State. And if Maulana Muhammad Shafi Deobandi were the head of the State, he would put to death those who have pronounced Deobandis as kafirs and outside the pale of Islam and inflict on them the death penalty if they come within the definition of a murtad, namely, if they have changed and not inherited their religious views.

"The genuineness of the fatwa, Ex. D. E. 13, by the Deobandis which says that Asna Ashari Shias are kafirs and murtads was questioned in the course of inquiry, but Maulana Muhammad Shafi made an inquiry on the subject from Deoband, and received from the records of that institution the copy of a fatwa signed by all the teachers of the Darul Uloom, including Maulana Muhammad Shafi himself, which is to the effect that those who do not believe in the sahabiyyat of Hazrat Siddiq-i-Akbar and who are qazif of Hazrat Aisha Siddiqa and have been guilty of tehrif of Quran are kafirs. This opinion is also supported by Mr. Ibrahim Ali Chishti who has studied and knows his subject. He thinks the Shias are kafirs because they believe that Hazrat Ali shared the prophethood with our Holy Prophet. He refused to answer the question whether a person who being a Sunni changes his view and agrees with the Shia view would be guilty of irtidad so as to deserve the death penalty. According to the Shias all Sunnis are kafirs, and Ahl-i-Quran, namely, persons who consider hadith to be unreliable and therefore not binding are, unanimously kafirs, and so are all independent thinkers. The net result of all this is that neither Shias nor Sunnis nor Deobandis nor Ahl-i-Hadith nor Barelvis are Muslims and any change from one view to the other must be accomplished in an Islamic State with the penalty of death if the Government of the State is in the hands of the party which considers the other party to be kafirs. And it does not require much imagination to judge of the consequences of this doctrine when it is remembered that no two

Ulama have agreed before us as to the definition of a Muslim. If the constituents of each of the definitions given by the Ulama are given effect to, and subjected to the rule of 'combination and permutation' and the form of charge in the Inquisition on Galileo is adapted mutatis mutandis as a model, the grounds on which a person may be indicted for apostasy will be too numerous to count.

"In an earlier part of this report we have referred to the prescription of the 'Ash-Shahab', a pamphlet written by Maulana Shabbir Ahmad Usmani who later became Sheikh-ul-Islam-i-Pakistan. In that pamphlet the Maulana had attempted to show from the Quran, the sunna, the ijma and qayas that in Islam the punishment for apostasy (irtidad) is death. After propounding the theological doctrine the Maulana had made in that document a statement of fact that in the time of the Caliph Sadiq-i-Akbar and the subsequent Caliphs vast areas of Arabia became repeatedly red with the blood of apostates. We are not called upon to express any opinion as to the correctness or otherwise of this doctrine but knowing that the suggestion to the Punjab Government to proscribe this pamphlet had come from the Minister for the Interior, we have attempted to inquire of ourselves the reasons for Government's taking a step which ex hypothesi amounted to condemning a doctrine which the Maulana had professed to derive from the Quran and the sunna. The death penalty for irtidad has implications of a far-reaching character and stamps Islam as a religion of fanatics, which punishes all independent thinking. The Quran again and again lays emphasis on reasoned thought, advises toleration and preaches against compulsion in religious matters but the doctrine of irtidad as enunciated in this pamphlet strikes at the very root of independent thinking when it propounds the view that anyone who, being born a Muslim or having embraced Islam, attempts to think on the subject of religion with a view, if he comes to that conclusion, to choose for himself any other religion he likes, has the capital penalty in store for him. With this implication Islam becomes an embodiment of complete intellectual paralysis. And the statement in the pamphlet that vast areas of Arabia were repeatedly bespattered with human blood, if true, could only lend itself to this inference that even when Islam was at the height of its splendour and held absolute sway in

Arabia there were in that country a large number of people who turned away from that religion and preferred to die than to remain in that system. It must have been some such reaction of this pamphlet on the mind of the Minister for the Interior which prompted him to advise the Punjab Government to proscribe the pamphlet. Further the Minister who was himself well-versed in religious matters must have thought that the conclusion drawn by the author of the pamphlet which was principally based on the precedent mentioned in paras 26, 27 and 28 of the Old Testament and which is only partially referred to in the Quran in the 54th verse of the Second Sura, could not be applicable to apostasy from Islam and that therefore the author's opinion was in fact incorrect, there being no express text in the Quran for the death penalty for apostasy. On the contrary each of the two ideas, one underlying the six brief verses of Surat-ul-Kafiroon and the other the la-Ikrah verse of the second surat, have merely to be understood to reject as erroneous the view propounded in the 'Ash-Shahab'. Each of the verses in Surat-ul-Kafiroon which contains thirty words and no verse of which exceeds six words, brings out a fundamental trait in man engrained in him since his creation while the la-Ikrah verse, the relevant portion of which contains only nine words, states the rule of responsibility of the mind with a precision that cannot be surpassed. Both of these texts which are an early part of the Revelation are, individually and collectively, the foundation of that principle which human society, after centuries of conflict, hatred and bloodshed, has adopted in defining one of the most important fundamental rights of man. But our doctors would never dissociate chuavenism from Islam." (pages 218-220 of the Report) (Mr. Justice S. A. Rahman in his "Punishment of Apostasy in Islam" has expressed the view that apostasy simpliciter is not punishable at all).

"We have dwelt at some length on the subject of Islamic State not because we intended to write a thesis against or in favour of such state but merely with a view to presenting a clear picture of the possibilities that may in future arise if true causes of the ideological confusion which contributed to the spread and intensity of the disturbances are not precisely located. That such confusion did exist is obvious because otherwise Muslim Leaguers, whose own Govern-

ment was in office, would not have risen against it; sense of loyalty and public duty would not have departed from public officials who went about like maniacs howling against their own Government and officers; respect for property and human life would not have disappeared in the common man who with no scruple or compunction began freely to indulge in loot, arson and murder; politicians would not have shirked facing the men who had installed them in their offices; and administrators would not have felt hesitant or diffident in performing what was their obvious duty. If there is one thing which has been conclusively demonstrated in this inquiry, it is that provided you can persuade the masses to believe that something they are asked to do is religiously right or enjoined by religion, you can set them to any course of action, regardless of all considerations of discipline, loyalty, decency, morality or civic sense.

"Pakistan is being taken by the common man, though it is not, as an Islamic State. This belief has been encouraged by the ceaseless clamour for Islam and Islamic State that is being heard from all quarters since the establishment of Pakistan. The phantom of an Islamic State has haunted the Musalman throughout the ages and is a result of the memory of the glorious past when Islam rising like a storm from the least expected quarterof the world—wilds of Arabia—instantly enveloped the world, pulling down from their high pedestal gods who had ruled over man since the creation, uprooting centuries old institutions and superstitions and supplanting all civilisations that had been built on an enslaved humanity. What is 125 years in human history, nay in the history of a people, and yet during this brief period Islam spread from Indus to Atlantic and Spain, and from the borders of China to Egypt, and the sons of the desert installed themselves in all old centres of civilisation—in Ctesiphon, Damascus, Alexandria, India and all places associated with the names of the Sumerian and the Assyrian civilisations. Historians have often posed the question; what would have been the state of the world today if Muawiya's siege of Constantinople had succeeded or if the proverbial Arab instinct for plunder had not suddenly seized the mujahids of Abdur Rahman in their fight against Charles Martel on the plains of Tours in Southern France. May be Muslims

would have discovered America long before Columbus did and the entire world would have been Moslemised; may be Islam itself would have been Europeanised. It is this brilliant achievement of the Arabian nomads, the like of which the world had never seen before that makes the Musalman of today live in the past and yearn for the return of the glory that was Islam. He finds himself standing on the crossroads, wrapped in the mantle of the past and with the dead weight of centuries on his back, frustrated and bewildered and hesitant to turn one corner or the other. The freshness and the simplicity of the faith, which gave determination to his mind and spring to his muscle, is now denied to him. He has neither the means nor the ability to conquer and there are no countries to conquer. Little does he understand that the forces, which are pitted against him, are entirely different from those against which early Islam had to fight, and that on the clues given by his own ancestors, human mind has achieved results which he cannot understand. He therefore finds himself in a state of helplessness waiting for some one to come and help him out of this morass of uncertainty and confusion. And he will go on waiting like this without anything happening. Nothing but a bold re-orientation of Islam to separate the vital from the lifeless can preserve it as a World Idea and convert the Musalman into a citizen of the present and the future world from the archaic incongruity that he is today.

"It is this lack of bold and clear thinking, the inability to understand and take decisions which has brought about in Pakistan a confusion which will persist and repeatedly create situation of the kind we have been inquiring into until our leaders have a clear conception of the goal and of the means to reach it. It requires no imagination to realise that irreconcilables remain irreconcilable even if you believe or wish to the contrary. Opposing principles, if left to themselves, can only produce confusion and disorder, and the application of a neutralising agency to them can only produce a dead result. Unless, in case of conflict between two ideologies, our leaders have the desire and the ability to elect, uncertainty must continue. And as long as we rely on the hammer where a file is needed and press Islam into service to solve situations it was never intended to solve, frustration and disappointment must dog our

steps. The sublime faith called Islam will live even if our leaders are not there to enforce it. It lives in the individual, in his soul and outlook, in all his relations with God and men, and our politicians should understand that if Divine commands cannot make or keep a man a Muslim, their statutes will not." (Report pages 231-232).

THE AHRAR

"A full account of the genesis and the activities of the Ahrar has been given in an earlier part of this report. The dominating principle by which the Ahrar policy is governed is not to play the second fiddle. It was on this principle that they separated from the Congress, though even after this they continued flirting with, and kowtowing before the Congress. There was no love lost between them and the Muslim League nor was Muslim League's Pakistan ever acceptable to them. During the period that the Muslim League under the leadership of the Quaid-i-Azam was struggling for Pakistan, the Ahrar were flinging foul abuse on all the leading personalities of the Muslim League and accusing them of leading un-Islamic lives. Islam was with them a weapon which they could drop and pick up at pleasure to discomfit a political adversary. In their dealings with the Congress religion was a private affair and nationalism their ideology. When they were pitted against the League, their sole consideration was Islam of which they held a monopoly from God, and the League was not only indifferent to but an enemy of Islam. To them Quaid-i-Azam was Kafir-i-Azam. They only knew what Islamic way of life was; and everyone in the Muslim League was living notoriously irreligious life. How they attempted to defeat the Muslim League with Islam as their weapon will be apparent from some utterances of Maulana Mazhar Ali Azhar, the Ahrar Leader to whom is ascribed the couplet in which the Quaid-i-Azam is called the Kafir-i-Azam. This gentleman is a Shia, but Madha-i-Sahaba with him is dearer than life, and during the Shia-Sunni riots in Lucknow both he and his son adopted the slogan which rouses the ire of every Shia and went from Lahore to Lucknow to fan the Shia-Sunni fire. Speaking outside the Bhati Gate at a public meeting of the Ahrar, he said that he had, for the preceding two or three months, been asking the League whether the names of Sahaba-i-

Karam would be revered in Pakistan but had received no reply. He alleged that in the Congress governed provinces where the League had no power, the League were not permitting the Sahaba to be named with reverence and asked whether, if power passed to the League, the State of affairs would be the same as in Lucknow and other provinces where Muslims were in a majority and Madha-i-Sahaba would be an offence. Proceeding he inquired if words of praise for Hazrat Abu Bakr, Hazrat Umar and Hazrat Usman could not be uttered in Lucknow and Mahmoodabad what would be the condition in League's Pakistan and what interest the Musalmans could have in such Pakistan ('Shahbaz' of 20th November, 1945).... This conduct of the Maulana shows quite clearly how the Ahrar and other parties can conveniently exploit religion, in which they don't believe, for their political ends.

"In this connection we may also mention a similar effort by Muslim League itself in 1946 to have Pirs and Mashaikh who command considerable following on its side. They appointed a Mashaikh Committee consisting of 12 members. Some Pirs and Mashaikh included in the Committee were leaders of unquestionable positions but the most amazing part of it is that even men like Khan Iftikhar Husain, Sardar Shaukat Hayat Khan, Malik Feroze Khan Noon and Nawab Muhammad Hayat Khan Qureshi were given the Honorific titles of Mashaikh. Thus Khan Iftikhar Hussain Khan was described as Pir Mamdot Sharif, Sirdar Shaukat Hayat Khan as Sajjada Nashin of Wah Sharif, Malik Feroze Khan Noon, Sajjada Nashin of Darbar Sargodha Sharif and Nawab Muhammad Hayat Khan as Sajjada Nashin of Sargodha Sharif and to top all, the Secretary of this Committee, Mr. Ibrahim Ali Chishti, was designated as Fazil-i-Hind Sajjada Nashin of Paisa Akbar Sharif". (Report page 254-255).

"Reverting to the Ahrar Leaders, Amir-e-Shariat Attaullah Shah Bokhari ('Milap' of 27th of December, 1945) announced in his speech at Alipore that the leaders of Muslim League were be-iman (irreligious people) who were not aware of their aqbat (life after death) but were also spoiling the aqbat of others and that the State which they were attempting to create was not Pakistan but Khakistan. And in a speech at Pasrur he said that no mother had

yet given birth to a child who could even make the P. of Pakistan" (Istiqlal Number of 'Daily Jadid Nizam of 1950'. (Page 252 of the Report).

"On Partition the Ahrar came to Pakistan as a defeated and frustrated party. But before coming, the All India Majlis-i-Ahrar passed a Resolution dissolving their organisation and accepting that in India no political organisation other than the Congress was called for. The Resolution advised the Musalmans to join the Congress and to acknowledge the leadership of Maulana Azad." (Page 256 of the Report).

"The conduct of the Ahrar calls for the strongest comment and is especially reprehensible. We can use no milder word—for the reason that they debased a religious issue by pressing it into service for a temporal purpose and exploited religious susceptibilities and sentiments of the people for their personal ends....Khawaja Nazimuddin described them as enemies of Pakistan, and this compliment they richly deserved for their past activities....How could a party which was opposed to Pakistan, to the Muslim League and all its leaders and which was merely a handmaid of the Congress, give up its ideology and on the establishment of Pakistan which came into being despite its efforts completely change its views, as it were, overnight and pose as the monopolists of Islam in a State which it had done its best to prevent from coming into existence. Did the Ahrar discover their ideal only after Pakistan? Where was their cry of an Islamic State for Pakistan when they were engaged in a grim struggle against parties and people who were clamouring only for a homeland for the Muslims." (Report p. 257).

Here are the views of their President for their conversion to the ideology which they wish to enforce in Pakistan :

Q. Do you know anything about Iqbal and Nehru controversy?

A. Yes.

Q. Please state the subject which was in controversy between them?

A. Nehru emphasised watan but Allama Iqbal emphasised religion.

Q. Then there was a clear conflict between the ideology of the Ahrar and that of Allama Iqbal?

A. Yes (Report p. 259-60).

Q. Why did the Ahrar then change their ideology?

A. So long as we were with the Congress, we were a political party but when Pakistan was about to come into existence we converted ourselves into a religious party.

Q. When the Ahrar were siding with the Congress, did they believe, as a part of their religion, that they could be good subjects in an undivided Country?

A. Yes.

Q. Do you still have that religious view?

A. No.

Q. Were the Ahrar a party of nationalist Muslims?

A. Yes.

Q. Did they have the same ideology as the Congress.

A. Yes.

Q. Was the Jamiat-ul-Ulama-i-Hind also a body of nationalist Muslims.

A. Yes.

Q. Could, in your opinion, a Musalman lead the life of a Musalman in the future Constitution as envisaged by the Ahrar and the Congress?

A. Yes.

Q. Do you still have that opinion?

A. No.

Q. Was Watan the predominant factor in the Congress and Ahrar ideology.

A. Yes.

Q. Did you share this view with the Congress?

A. Yes.

Q. Can you have the same ideology for the subjects of Pakistan as you had when associated with the Congress?

A. No.

Comment on this is superfluous except that in Pakistan even a party with the Ahrar's past can overthrow the Government if it has the common sense of raising a plausible religious issue. (Report p. 259-60).

JAMAAT-I-ISLAMI

"The Jamaat-i-Islami existed before the partition with its headquarters at Pathankot in the district of Gurdaspur, and Maulana Abul Ala Maududi was its founder. On partition the Maulana came over to Pakistan and in 1952 framed a new constitution for Jamaat-i-Islami in Pakitan. The Indian Jamaat-i-Islami still functions and has its own constitution.

The ideology of Jamaat-i-Islami is perfectly simple. It aims at the establishment of the sovereignty of Allah throughout the world which, in other words, means the establishment of a religio-political State, which the Jamaat calls Islam. For the achievement of this ideal it believes not only in propaganda but in the acquisition of political control by constitutional means and where feasible by force. A Government which is not based on Jamaat's conception, as for instance where it is based on the conception of a nation, is, according to Maulana Amin Ahsan Islahi, a Satanic Government, and according to Maulana Abul Ala Maudoodi himself is Kufr; all persons taking part in such Government, whether as administrators or otherwise or willingly submitting to such system being sinners. The Jamaat was therefore professedly opposed to the Muslim League's conception of Pakistan, and since the establishment of Pakistan, which it called Na-Pakistan, has been opposed to the present system of Government and those who are running it. In none of the writings of Jamaat the remotest reference in support of the demand for Pakistan is to be found, and on the contrary, these writings are all opposed to the form in which Pakistan came into being and at present exists. According to the statement of the founder of the Jamaat before a military court, short of armed rebellion, the Jamaat believes in, and has its objective the replacement of the present form of Government by a Government of the Jamaat's conception. The Jamaat has a head who is called an Amir and though its membership is limited, consisting of only 999 persons

at present, the Jamaat has a vast publication and propaganda machinery." (Page 243 of the Report).

"Islam emphasises the doctrine that life in this world is not the only life given to man but that eternal life begins after the present existence comes to an end, and that the status of a human being in the next world will depend on his beliefs and actions in the world. As the present life is not an end in itself but merely a means to an end, not only the individual but also the State, as opposed to the secular theory which bases all political and economic institutions on a disregard of their consequences on the next life, should strive for human conduct which ensures for a person better status in the next world. According to this theory Islam is the religion which seeks to attain that object." (Report p. 205).

"Therefore if Pakistan is intended to be converted into an Islamic State in the true sense of the word, its constitution must contain the following provisions:

(*i*) that all laws found in the Quran or sunna shall be deemed to be a part of the law of the land for Muslims and shall be enforced accordingly;

(*ii*) that unless the constitution itself is framed by Ijma-i-Ummat, namely, by the agreement of the Ulama and mujtahids of acknowledge status, any provision of the constitution which is repugnant to the Quran or sunna shall to the extent of the repugnancy be void;

(*iii*) that unless the existing laws of Pakistan are adapted by Ijma-i-Ummat of the kind mentioned above, any provision in the existing law which is contrary to the Quran or sunna shall to the extent of the repugnancy be void."

There had already been a war between India and Pakistan. Though the Congress had promulgated a secular democratic constitution for India and was in power at the time the court questioned the Ulama several communal organisations had appeared which opposed the Congress. The Hindu Mahasabha had for some time gone into the background after one of its members had assassinated Gandhi in January 1948, but it had regained sufficient strength.

But the most important communal organisation was the Jan Singh which had been founded by Dr. Shayama Prasad Mukerji, who had been a Vice-Chancellor of the Calcutta University, a member of the Cabinet and had resigned over the Pakistan issue. He was a powerful speaker and had considerable influence on the masses. This party's aim was to revitalise Hindu society throughout the country. Thus this Communal Party being in opposition to the Congress it could certainly influence the Congress to find an excess for an invasion of Pakistan which the Congress itself was considering weak and indefensible. In fact in an article, the gist of which was published in the 'Pakistan Times', Mr. Merchand Machaja had disclosed that in early December 1947 decision had been taken that Pakistan should be attacked.

The Ulama had based their demands on the Objectives Resolution and an Islamic State. We could not ignore the position of Indian Muslims who were left behind and their duty if war was declared between India and Pakistan. On these possibilities the following question arose:

1. the incidents of an Islamic State;
2. the duty of Indian Muslims in case of war between India and Pakistan;
3. the question of darul harb, darul-Islam and hijrat;
4. the effect of revitalised Hindu Government in India;
5. question of Jihad and Khums.

On these questions the court sought guidance from the Ulama by questioning them as follows :

MAULANA ABUL HASNAT, PRESIDENT JAMIAT-UL-ULAMA-I-PAKISTAN:

Q. Is the institution of legislature, as distinguished from the institution of a person or body of persons entrusted with the interpretation of law, an integral part of an Islamic State?

A. No. Our law is complete and merely requires interpretation by those who are experts in it. According to my belief no question can arise the law relating to which cannot be discovered from the Quran or the Hadis.

Q. Who were Sahib-il-hall-o-walaqd?

A. They were the distinguished Ulama of the time....They were not in any way analogous or similar to the legislature in modern democracy.

The same view was expressed by Amir-i-Shariat Syed Attaullah Shah Bukhari in one of the speeches reported in 'Azad' of 22nd April, 1947, in the course of which he had said that our din is complete and perfect and that it amounts to Kufr to make more laws. (Report p. 211).

Maulana Abul Ala Maududi qualified this view by saying that further legislation in an Islamic State is permissible on matters which are not covered by the Quran, the Sunna or previous Ijma. (Report p. 211).

MAULANA ABUL ALA MAUDUDI, AMIR JAMAAT-I-ISLAMI:

Q. Please define a Muslim?

A. A person is a Muslim if he believes in (1) tauhid (2) in all the prophets (3) all the books revealed by God, (4) Malaika (angels) and (5) Yauma-ul-Akhir (The Day of Judgement).

MAULANA AMIN AHSAN ISLAHI OF JAMAAT-I-ISLAMI:

Q. Who is a Musalman?

A. There are two kinds of Musalman, a political Musalman and a haqiqi Musalman. In order to be called a political Musalman, a person must :

(*i*) believe in the Unity of God,

(*ii*) believe in our Holy Prophet being the Khatim-ul-Nabiyeen i.e. final authority in all matters relating to the life of a person;

(*iii*) believe that all good and evil comes from Allah;

(*iv*) believe in the Day of Judgement;

(*v*) believe in the Quran to be the last book revealed by Allah;

(*vi*) perform the annual pilgrimage to Mecca;

(*vii*) pay the Zakat;

(*viii*) say his prayers like a Musalman;

(*ix*) observe all apparent rules of Islam;

(*x*) observe all the fasts.

If a person satisfies all these conditions he is entitled to the rights of a full citizen in an Islamic State. If any one of these conditions is not satisfied, the person concerned will not be a political Musalman. (Again said). It would be enough for a person to be a Musalman if he merely professes his belief in these ten matters irrespective of whether he puts them into practice or not.

In order to be a real Musalman, a person must believe in and act on all the injunctions by Allah and His Prophet in the manner in which they have been enjoined upon him.

Q. Will you say that only the real Musalman is mard-i-salih?

A. Yes.

Q. Do we understand you aright that in the case of what you have called a political Musalman, belief alone is necessary while in the case of a real Musalman there must not only be belief but also action ?

A. No, you have not understood me aright. Even in the case of a political Musalman action is necessary but what I mean to say is that if a person does not act upon the belief that is necessary in the case of such a Musalman, he will not be out of the pale of a political Musalman.

Q. If a political (siasi) Musalman does not believe in things which you have stated to be necessary will you call such a person be-din ?

A. No, I will call him merely be "amal". (It will be noticed that there is a wide difference between the definition of a Muslim as given by Maulana Amin Ahsan Islahi and that given by Maulana Abul Ala Maududi whose definition does not exclude the Ahmedis from Islam as he does not say that our Prophet was Khatim-ul-Nabiyeen.

MAULANA ABUL HASNAT SYED MUHAMMAD AHMAD QADRI, PRESIDENT JAMIATUL-ULAMA-I-PAKISTAN:

Q. If we were to have an Islamic State in Pakistan what will be the position of the Kuffar (Non-Muslims)? Will they have a voice in the making of the laws, the right of administering the law and the right to hold public offices?

A. Their position will be that of Zimmies. They will have no voice in the making of laws, no right to administer the law and no right to hold public offices.

Q. In an Islamic State can the head of State delegate any part of his power to Kuffar?

A. No. (Report, p. 213).

MAULANA AHMAD ALI :

Q. If we were to have an Islamic State in Pakistan, what will be the position of the Kuffar? Will they have a hand in the making of Laws, the right to hold public offices?

A. Their position will be that of Zimmies. They will have no say in the making of laws and no right to administer the law. Government may, however, permit them to hold any public office. (*Note*: Why this hue and cry against Sir Muhammad Zafrullah Khan?) (Report p. 213).

MIAN TUFAIL MUHAMMAD OF JAMAAT-I-ISLAMI :

Q. Read the article in the 'Civil & Military Gazette' of 12th October, 1953, on minorities rights and say whether it correctly represents your view of an Islamic State? (It was stated in the article that minorities would have the same rights as Muslims).

A. I have read this article and do not acknowledge these rights for the Christians or other non-Muslims in Pakistan if the State is founded on the ideology of the Jamaat.

The confusion on this point in the mind of Maulana Abdul Hamid Badayuni, President, Jamiat-ul-Ulama-i-Pakistan, is apparent from the following :—

Q. Have you ever read the aforesaid speech (the speech of the Quaid-i-Azam) to the Constituent Assembly of Pakistan on 11th August, 1947?

A. Yes, I have read the speech.

Q. Do you still agree with the conception of Pakistan that the Quaid-i-Azam presented to the Constituent Assembly in which he had said that thereafter there would be only one Pakistani

nation, consisting of Muslims and non-Muslims, having equal civil rights without any distinction of race, religion or creed and that religion would be merely a private affair of the individual (Pages 213-214 of the Report).

A. I accept the principle that all communities, whether Muslim or non-Muslim, should have, according to their population, proper representation in the administration of the State and in legislation, except that non-Muslims cannot be taken in the army or the judiciary or be appointed as Ministers or to other posts involving the reposing of confidence.

Q. Are you suggesting that the position of non-Muslims would be that of zimmies or any better?

A. No. By zimmies are meant non-Muslims of lands which have been conquered by an Islamic State and the word is not applicable to non-Muslim minorities already living in an Islamic State. Such minorities are called Muahids i.e. those people with whom some agreement has been reached.

Q. What will be their status if there is no agreement with them?

A. In that case such communities cannot have any right of citizenship.

Q. Will the non-Muslim communities inhabiting Pakistan be called by you as Muahids?

A. Not in the absence of an agreement with them. To my knowledge there is no such agreement with them (Pages 213-214 of the Report).

Note: (So according to this learned divine, the non-Muslims of Pakistan will neither be citizens, zimmies not muahids. All three possible positions having been excluded, what will they be then? Outlaws? (The witness conveniently forgot the Nehru-Liaqat Pact of 8th April, 1949).

MAULANA ABUL ALA MAUDUDI :

Q. Is a country on the border of dar-ul-Islam always qua an Islamic State in the position of darul-harb?

A. No. In the absence of an agreement to the contrary, the Islamic State will be potentially at war with the non-Muslim neighbouring country. The non-Muslim country acquires the status of darul-harb only after the Islamic State declares a formal war against it (page 221-223 of the Report).

Note: According to Ghiassullughat darul harb is a country belonging to infidels which has not been subdued by Islam and the consequence of a country becoming darul harb are thus stated in the Shorter Encyclopaedia of Islam (Pages 221-223 of the Report).

"When a country does become a darul harb, it is the duty of all Muslims to withdraw from it, and a wife who refuses to accompany her husband in this is *ipso facto* divorced". (Note what was the duty of Indian Muslims in the three wars with India).

Thus in case of war between India and Pakistan, if the latter is an Islamic State, we must be prepared to receive four crores of Muslims (now almost ten crores) from across the border into Pakistan. In fact Maulana Abdul Hamid Badayuni, President Jamiat-ul-Ulama-i-Pakistan, thinks that a case of Hijrat already exists for the Musalmans of India. His view on the subject:

Q. Do you call your migration to Pakistan as Hijrat in the Islamic sense?

A. Yes. (Pages 221-222 of the Report).

(If the Maulana's view is correct, how will Pakistan accommodate ten crores Muslims. Another and a bigger question for the orthodox: How can Pakistan impose restrictions on Muslim immigrants from India or any other Muslim country, and how can Pakistan and Saudi Arabia impose restrictions on the pilgrims who have to go to Mecca for the performance of a religious obligation—the Hajj?) (Page. 225 of the Report).

The law relating to prisoners of war is another branch of Islamic Law which is bound to come in conflict with modern International Law. As for instance in matters relating to prisoners of war we shall have to be governed by Maulana Abul Ala Maududi's view, assuming that view is based on the Quran, the Sunna and previous Ijma, which is as follows:

Q. Is there a law of war in Islam?

A. Yes.

Q. Does it differ fundamentally from the modern International Law?

A. These two systems are based on different fundamental principles.

Q. What rights have non-Muslims who are taken prisoners of war?

A. The Islamic Law on the point is that if the country of which these prisoners are nationals pays ransom they will be released, (*Note*: To join enemy forces again). An exchange of prisoners is also permitted. If neither of these alternatives is possible, the prisoners will be converted into slaves for ever. If any such person makes an offer to pay his ransom out of his own earnings, he will be permitted to collect the money necessary for the fidya (ransom).

Q. Are you of the view that unless a government assumes the form of an Islamic government, any war declared by it is not a Jihad?

A. No. A war may be declared to be a Jihad if it is declared by a national government of Muslims in the legitimate interests of the State (Page 226 of the Report). I never expressed the opinion attributed to me in Ex. D. E. 12 (*Note*: Ex. D. E. 12 was admittedly a letter written by Mian Tufail Muhammad (Now Amir, Jamaat-i-Islami) during what is known as the Kashmir Jihad. In this document Maulana Abul Ala Maududi's opinion was expressed in the following words:

"Until the government becomes Islamic by adopting the Islamic form of government, to call any of its wars Jihad would be tantamount to describing the enlistment and fighting of a Muslim on the side of the Azad Kashmir forces Jihad and his death as martyrdom. What the Maulana means is that, in the presence of treaties, it is against Shariat, if the Government or its people participate in such a war.

If the Government terminates the treaty and declares war, even then the war started by government would not be termed Jihad unless the Government becomes Islamic (translation from Urdu). (From p. 226 of the proceedings).

Similar is the opinion expressed by Mian Tufail Muhammad on the Islamic Law of War. Questioned, he said :

Q. Is there any law of war in Islamic Law?

A. Yes.

Q. If that comes into conflict with international law which will you follow?

A. Islamic Law.

Q. Then please state what will be the status of prisoners of war captured by your forces.

A. I cannot reply off hand to this question. I will have to study the point. Of course Ghanima (plunder) and Khums (one fifth of the property seized in War if treated as a necessary part of Jihad will be treated by international society as a mere act of brigandage, (Page 227 of the Report). (Explanation—Muslim soldiers (Mujahids) who went to war could seize the property of the conquered people but had to pay one-fifth of such property to the State and appropriate the remaining four-fifth for themselves. This practice prevailed upto the time of Hazrat Umar who introduced some change in it).

Effect of this ideology on Muslims of non-Muslim states. (From p. 227 of the Report).

AMIR-I-SHARIAT SYED ATTAULLAH SHAH BUKHARI :

Q. In your opinion is a Musalman bound to obey the orders of a kafir Government?

A. It is not possible that a Muslim should be a faithful citizen of a non-Muslim government.

Q. Will it be possible for the four crores of Indian Muslims to be faithful citizens of their State.

A. No.

(From p. 227 of the Report).

MAULANA ABUL HASNAT SYED MUHAMMAD AHMAD QADRI, PRESIDENT JAMIAT-UL-ULAMA-I-PAKISTAN

Q. Will you admit for the Hindus, who are in a majority in India, the right to have a Hindu religious State?

A. Yes.

Q. Will you have any objection if the Muslims are treated under that form of government as malishes or shudras?

A. No.

(Page 228 of the Report).

MAULANA ABUL ALA MAUDUDI AMIR JAMAAT-I-ISLAMI

Q. If we have this form of government in Pakistan (treating non-Muslims as zimmies), will you permit Hindus to have their constitution on the basis of their religion.

A. Certainly. I should have no objection even if the Muslims of India are treated in that form of government as shudras and malishes and Manu's laws are applied to them depriving them of all share in the government and the rights of a citizen.

AMIR-I-SHARIAT SYED ATTAULLAH SHAH BUKHARI

Q. How many crores of Muslims are there in India.

A. Four crores.

Q. Have you any objection to Manu's laws being applied to them, according to which they will have no civil rights and will be treated as malishes and shudras.

A. I am in Pakistan and I cannot advise them (p. 228 of the Report).

MIAN TUFAIL MUHAMMAD OF JAMAAT-I-ISLAMI

Q. What is the population of Muslims in the world.

A. Fifty crores.

Q. If the total population of Muslims in the world is 50 crores, as you say, and the number of Muslims in Pakistan, Saudi Arabia, Yemen, Indonesia, Turkey and Iraq does not

exceed 20 crores, will not the result of your ideology be to convert 30 crores of Muslims in the world into hewers of wood and drawers of water.

A. My ideology should not affect their position.

Q. Even if they are subjected to discrimination on religious grounds and denied ordinary rights of citizenship.

A. Yes.

This witness goes to the extent of asserting that even if a non-Muslim government were to offer posts to Muslims in the public service of the country, it will be their duty to refuse such posts. (p. 228 of the Report).

GHAZI SIRAJUDDIN MUNIR

Q. Do you want an Islamic State in Pakistan?

A. Surely.

Q. What will be your reaction if the neighbouring country (India) was to found their political system on their own religion?

A. They can do it if they like (p. 229 of the Report).

Q. Do you admit for them the right to declare that all Muslims in India are shudras and malishes with no civil rights whatsoever?

A. We will do our best to see that before they do it, their political sovereignty is gone. We are too strong for India. We will be strong enough to prevent India from doing this.

Q. Is it a part of the religious obligations of Muslims to preach their religion?

A. Yes.

Q. Is it a part of the duty of Muslims in India to preach their religion.

A. They should have that right.

Q. What if the Indian State is founded on a religious basis and the right to preach religion is disallowed to the Muslim nationals.

A. If India makes any such law, believer in the expansionist movement as I am, I will march on India and conquer her. (pp. 223 to 229 of the Report).

MASTER TAJUDDIN ANSARI

Q. Would you like to have the same ideology for the four crores of Muslims in India as you are impressing upon the Muslims of Pakistan?

A. That ideology will not let them remain in India for one minute.

Q. Does the ideology of a Muslim change from place to place and from time to time?

A. No.

Q. Then why should not the Muslims of India have the same ideology as you have?

A. They should answer that question (p. 229 of the Report).

MAULANA ABUL HASNAT MUHAMMAD AHMAD QADRI, PRESIDENT JAMIAT UL-ULAMA-I-PAKISTAN

Q. What will be the duty of Muslims in India in case of war between India and Pakistan.

A. Their duty is obvious, namely to side with us and not to fight against us on behalf of India. (p. 230 of the Report).

MAULANA ABUL ALA MAUDUDI

Q. What will be the duty of the Muslims in India in case of war between India and Pakistan?

A. Their duty is obvious and that is not to fight against Pakistan or to do anything injurious to the safety of Pakistan (p. 230 of the Report).

MAULANA ABDUL HAMID BADAYUNI

Q. The (Muslim) soldier or the policeman will have the right to disobey a command by a (non-Muslim) superior authority. (Report, p. 230).

A. Yes.

MAULANA ABUL HASNAT, SYED MUHAMMAD AHMAD QADRI

I believe that if a policeman is required to do something which we consider to be contrary to our religion, it should be the duty of the policeman to disobey the authority. The same would be my answer if army were substituted for police (p. 231 of the Report).

Q. In the case supposed above, will you give the policeman or the soldier the right of himself deciding whether the command he is given by his superior authority is contrary to religion.

A. Most certainly.

Q. Suppose there is war between Pakistan and another Muslim country and the soldier feels that Pakistan is in the wrong and that to shoot a soldier of the other country is contrary to religion, do you think he would be justified in disobeying his commanding officer?

A. In such a contingency the soldier should take a fatwa of the Ulama (pp. 230-231 of the Report).

MAULANA ABDUL HALEEM QASURI, REPRESENTATIVE OF JAMIAT UL-ULAMA-I-ISLAM

Q. What are your views on tashbih and tamsil?

A. You should ask me a concrete question.

Q. And your views on lahv-o-lab?

A. The same is my reply to the question.

Q. What about sculpture?

A. It is prohibited by our religion.

Q. Will you bring playing of cards in lahv-o-lab?

A. Yes it will amount to lahv-o-lab.

Q. What about music and dancing?

A. It is all forbidden by our religion.

Q. If the State is founded on your ideals, will you make a law stopping portrait painting, photography of human beings, sculpture, playing of cards, music, dancing, acting and all cinemas and theatres?

A. Keeping in view the present form of these activities my answer is in the affirmative (p. 230 of the Report).

Thus four crores of Muslims in India (now ten crores) were left to their fate. They could not, according to Mian Tufail Muhammad, now Amir Jamaat-i-Islami, take any post in India even if it was offered to them and Maulana Abul Ala Maududi did not mind if they were converted into shudars and malishes if Hindus founded their State on a religious basis. The two Muslim Presidents and two Chief Justices of India, and a number of Ambassadors, the Muslim Air Chief of India and Muslims who compete for recruitment to public services are all sinners. And what is Jamaat-i-Islami doing in India. I hope Mian Tufail Muhammad is not teaching to the Muslims in India, his philosophy that it is a sin to accept any job under the government of India if one is offered to them.

Quite recently, if 1971 can be called a recent year:

Mr. (now Mr. Justice) Javed Iqbal son of Allama Iqbal has in some respects criticised the Report in his book "Ideology of Pakistan" 1971. The objections made by him to the Report are replied point by point :

1. At p. 51 he says :
   "During the past, some of the political leaders of this country did not hesitate to use Islam for their own selfish ends. Every one who has gone through the Munir Committee Report (1954) is aware of this unfortunate fact."
   This is true.
2. At p. 107 he says: "In recent times the Munir Committee Report seems to have attempted to define a Muslim objectively and in rational terms".

   This is not correct and I do not accept the compliment. On the contrary what we said at p. 218 is :
   "Keeping in view the several difinitions given by the Ulama need we make any comment except that no two learned divines are agreed on this fundamental. If we attempt our own definition as each learned divine has done and that definition differs from that given by all others, we unanimously go out of Islam. And if we adopt the definition given, say by any one of the Ulama, we remain Muslims according to the view of that a'alim but Kafirs according to the definition of everyone else".
3. At p. 107 he says: But during the course of their investigation they were called upon to express opinion on certain matters of Islamic theology and jurisprudence in which it is respectfully submitted, they were neither qualified nor trained to express opinion.

Reply—We were not called upon by anyone to express any opinion on certain matters of Islamic theology and jurisprudence. The question who is a Muslim was one of the fundamental questions before us for the simple reason that if according to the Ulama, the Ahmadis were not Muslims, the Ulama were supposed to know who a Musalman is and what the grounds are on which they were asking

the Ahmadis to be outside the pale of Islam. The question was vital to the inquiry and had not risen for the first time. There were several authoritative judgements on the points including a judgement by the eminent Muslim Judge Mr. Justice Mahmud, another by Sir Abdurrashid, the author of Family Laws Ordinance, several judgements by English Judges including the Privy Council in which he board had ruled that what has to be seen if a person claims to be a Muslim is whether he professes to believe in the Kalima, La Ilaha Illallah, Muhammaddurrusullallah, and not whether he actually believes in it or not. This was in accordance with what the Quran itself says in Ch. 4 : 49: "Say not to anyone who offers you salutation, thou are not a believer". Though this verse relates to a specific occasion, but in its application is general. One of these precedents related to Ahmadis themselves who were held to be Muslims because of their belief in the Kalima. We also knew that in early Islam out of the 73 sects of Islam who were included in the Ummat, some had gone far beyond the Ahmadis e.g. the Tanasukhiya who believe in the transmigration of soul, the Ibariyah who do not believe in the Prophethood of our Holy Prophet and consider him merely a philosopher and a learned man, the Islahiya who attach no importance to good works as God is indifferent to man's actions, the Riyaziyah who attach no importance to belief, the Maimuniyah who don't believe in the unseen, the Akhnaziyah who don't believe in future punishment, the Habibiyah who believe that since God loves man, He will not punish him, the Ahadiyah who don't consider the injunctions of the Prophet as binding, the Shaitaniyah who don't believe in the existence of Satan, the Alwiyah and Ibadiya who give to Hazrat Ali the status of a prophet, the Ismailiyah who believe that prophethood did not cease with the Holy Prophet. (*Ghiassullughat* quoted in Hugh's *Dictionary of Islam*).

We were not called upon to declare the Ahmadis as Muslim or non-Muslim. This was beyond our terms of reference and we had to ask the definition of a Muslim from the Ulama because if they could not give any definition which excluded the Ahmadis from Islam, they had no occasion for the agitation which had resulted in many deaths and destruction of property and to raise public temper

to the extent that the situation went out of the control of the civil authorities and Martial Law had to be imposed.

4. Again at p. 107 Mr. Javed Iqbal observes :

"The judges of our courts of law are trained in the British legal system and they have no knowledge of, and are obviously unconcerned with the intricacies and refinements of Islamic theology and jurisprudence. They therefore never claimed to hold an inquiry in the capacity of Qazis or Muftis and yet felt obliged to express opinion on matters of Islamic theology and jurisprudence over which they had no jurisdiction".

Reply—Judges who have been lawyers have to be fully acquainted with Muslim Law of inheritance, marriage, dower, divorce, guardianship, gifts, wills and wakfs etc. There is one paper of Muslim Law which they have to pass in the LL.B. Examination. They are therefore fully acquainted with the sources of Muslim Law.

5. At p. 108 Mr. Javed Iqbal says as follows :

"They raised the question, "What is the definition of a Muslim?" in the course of their investigation and examined a few Ulama. But instead of deducing an answer to their question (i.e. the minimum requirement for being a Muslim) from the evidence which was recorded before them through any of the methods (e.g. qiyas (analogy), istihsan (preference), maslihat-mursala (public good), istidlal (inference), actually they could not have applied any of these modes of reasoning because of their unfamiliarity with the field. They deemed it fit to let the evidence stand in the Report as it was recorded and they arrived at the conclusion that their existed considerable confusion in the minds of our Ulama about the definition of a Muslim".

Reply—The number of Ulama examined in the inquiry was not "few" as stated. All the classes of Ulama were examined, including Maulana Abul Ala Maududi, Maulana Abul Hasnat Syed Muhammad Ahmad Qadri and Maulana Abdul Haleem Qasuri. Of course, Mirza Bashiruddin, the head of the Ahmadiya movement and Maulana Sadruddin leader of the Lahori party were also examined.

We were not required to give any definition of a Muslim and as stated above did not give one. We were fully familiar with the several modes of interpretation stated by Mr. Javed Iqbal, but it was for the Ulama to use these methods in giving the definition so as to exclude the Ahmadis from Islam; otherwise they had no justification for the row they actually raised.

6. At p. 108, Mr. Javed Iqbal further says: "It is respectfully submitted that the conclusion arrived at by the Munir Committee is erroneous and misleading. The Munir Committee was constituted of our judges who had no jurisdiction to express opinion on theological matters. There is no precedent in British law of secular judges attempting to express opinion on a theological point."

Reply—The English judges don't express any opinion because such questions do not come up before them.

We did not step one whit from the terms of our reference and as I have stated above did not express any opinion on any theological point. And if by precedent in British law Mr. Iqbal means British Indian Law, I have mentioned above how many times and how many subjects of Muslim Law, Indian and Pakistani Judges are required by the existing law to decide.

7. At page 108 Mr. Iqbal concludes his criticism of the Report in these words: "The effect of the opinion held in Munir Committee Report is that the term Muslim remains undefined. What, then, it may be asked, is the justification for striving for establishing and claiming Pakistan as the Home and the State of the Muslim nation. The conclusion arrived at by the Munir Committee as regards this question seems to strike at the very root of Pakistan. It is not only inexpedient and against public policy but wholly erroneous."

Reply—The term "Muslim" remained undoubtedly undefined by the Ulama who appeared before us. What effect this finding has on the struggle for Pakistan, is a question to be asked of the Ulama who had all opposed Pakistan and the founder of Pakistan.

As the Ulama admitted that their demands against the Ahmadis were based on the Objectives Resolution (see pages 229 and 361 of

the Proceedings) it is perfectly clear that this Resolution brought about a fundamental change in the Quaid-i-Azam's conception of, the future form of Government in Pakistan. As there were still a large number of non-Muslims in Pakistan it created an anxiety in Nehru's mind about their future status. Therefore there was a pact between Liaqat Ali Khan and Nehru on 8th April, 1950, according to which minorities in both countries were declared entitled to all the rights of the majority, including all offices in government, civil and military.

The very fact that the Quaid-i-Azam's speech of 11th August, 1947 was described before us as having been made under the inspiration of the devil and that any government formed in accordance with the terms of that speech would be a Satanic government is sufficient proof of the change brought about by the Objectives Resolution.

Chapter VII

AFTER YUSUF PATEL'S CASE

(*The First Constitution*)

The period from 24th October to 12 April 1955 was a period of crisis created by the dissolution of the Constituent Assembly by the Governor-General, Ghulam Muhammad. During this period nothing was said about Islam, the Quran and Sunnah, the compilations of hadis or the exposition of Islamic law by the four imams and the two disciples of Imam Abu Hanifa. The whole attention of the country was rivetted on the litigation before the Federal Court which instead of going back to the Quran and Sunat was going back to England, to the days of Bracton and Lord Mansfield and was engaged in expounding the traditions of democracy, and the crown's prerogative in the British Colonies, possessions and dominions. When after the Federal Court's decision in Yusuf Patel's case on 12th April 1955, the second Constituent Assembly began to function under the leadership of Chaudhri Muhammad Ali, it, among other laws, within a period of six months, framed the Constitution of 1956 which having been passed on 29th February 1956 received the assent of the Governor-General on 3rd March 1956.

Though the Constitution of 1956, in its preamble referred to a declaration by the Quaid-i-Azam Muhammad Ali Jinnah that Pakistan would be a democratic State based on Islamic principles of social justice, it was in its contents entirely different from what the Quaid-i-Azam had said in his speech of 11th August 1947 and earlier in an interview with the Reuter's correspondent, Mr. Doon Campbell.

If referred to safeguarding the legitimate interests of minorities whereas according to the Quaid-i-Azam there was to be no distinction between minorities and majorities—a position which had been confirmed by the Liaqat-Nehru Pact of 8th April 1950.

Though the 1956 Constitution was based, principally, on the pattern of the Government of India Act, inasmuch as it gave to the Governor-General power to appoint the Prime Minister and to dissolve the assembly, it laid special emphasis on its Islamic features which were :

1. The State was named as the Islamic Republic of Pakistan.
2. The Head of State was to be a Muslim.
3. There was a recital in the preamble of the Constitution, taken from the Objectives Resolution, that sovereignty over the entire Universe belongs to Allah Almighty alone and that the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust.
4. That the principle of democracy, freedom, equality, tolerance and social justice as enunciated by Islam, were to be fully observed.
5. That the Constitution was to be such as would enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the teachings and requirements of Islam, as set out in the Holy Quran and the Sunnah.

The statement in the Directive Principles of State policy were that :

(*i*) unity in the country was to be promoted;

(*ii*) steps were to be taken to enable the Muslims of Pakistan to order their lives in accordance with tne Holy Quran and Sunnah;

(*iii*) the state was to endeavour, as regards the Muslims of Pakistan.

(*a*) to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah;

(*b*) to make the teaching of the Holy Quran compulsory;

(*c*) to promote the unity and the observance of Islamic moral standards;

(*d*) to secure the proper organisation of zakat, wakf and mosques;

(*e*) to prevent the consumption of alcoholic liquor; and

(*f*) to eliminate riba (usury).

The President was to set up an organization for Islamic Research and Instructions in advanced studies to assist in the reconstruction of Islamic society on a truly Islamic basis. No law was to be enacted which was repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah and existing laws were to be brought in conformity with such injunctions. Effect was to be given to this provision by the appointment of a Commission to make recommendations:

(*i*) as to the measures for bringing the existing laws into conformity with the injunctions of Islam;

(*ii*) as to the stages by which such measures should be brought into effect; and

(*iii*) to compile in a suitable form for the guidance of National and Provincial Assemblies such injunctions of Islam as could be given legislative effect.

It is important to notice that the Commission was merely to make recommendations; and it was for the legislature to adopt and make a law in accordance with them. By themselves the recommendations had no legal force.

A cursory glance at these provisions would show that it is in direct conflict with the secularism of the Quaid-i-Azam. The National Assembly under this Constitution is not sovereign in the sense that it can make any law it considers suitable or necessary during the period of its term. On the termination of its term or its dissolution, people in a fresh election can judge whether a member of the Assembly has come up to the expectations of his electors. If he does not, they can elect another man to represent them in the Assembly. Thus an entirely new Assembly may come into existence. In a democratic form of government sovereignty in the political sense rests in the people. This is precisely what the Quaid-i-Azam meant when he stated to Mr. Doon Campbell that the new state would be a

modern democratic state in which sovereignty would rest with the people. In the 1956 Constitution, however, sovereignty rests with Allah and religious restrictions are imposed on the power of the legislature. The Constitution is mostly, almost exclusively, for the Muslims, the minorities not having equal rights with the Muslims and being merely entitled to safeguards to protect their legitimate interests. Lastly, there are to be different laws for the Muslim majority and the non-Muslim minority. The name of the country is the Islamic Republic and only a Muslim can be the Head of State, the latter provision being entirely unnecessary, and having been incorporated to show the Islamic character of the State.

Chaudhri Muhammad Ali's Constitution was in accordance with the Objectives Resolution but a reversion to basic principles is evident from Ayub Khan's regime. He (Ayub) emphasised in the preamble Islamic Principles of equality, justice and toleration and in his composition of the Advisory Council there were Ulama of liberal thought and several officials and lawmen who could understand the problems, that arose from time to time.

The results that follows from the statements of the Ulama may now be stated as follows :

1. that the Quaid-i-Azam's conception of a secular state and of a Pakistani nation was a satanic conception;
2. that the Muslims of India could not be loyal to or faithful subjects of the Indian Government;
3. that it is Kufr for them to take any jobs and that according to the present Amir of Jamaat-i-Islami if any post in India is offered to them, it is their duty not to accept it;
4. that the same is the case with Muslims living under non-Muslim governments in other places of the world, their estimated number at the time of the inquiry being 30 crores;
5. that Pakistan, which as compared with India, is a smaller state is bound to take Indian Muslims in it and has no jurisdiction to refuse to take them; but Pakistan has neither the resources nor land for their settlements;

6. that since the demand for Pakistan was generally supported by the Indian Muslims, they have as much right as Maulana Maududi to come and settle in Pakistan, but Liaquat Ali Khan as early as April 1951 barred their entry for settlement in Pakistan by passing the Pakistan Citizenship Act.

Thus we lefı four crores (now 10 crores) of Muslims in India to their fate and according to the ideology of Jamaat-i-Islami they can neither accept any job nor according to unanimous opinion of other divines they can be faithful subjects of India.

Chapter VIII

FURTHER CHANGE IN IDEOLOGY

Temporary Reversion to Principles of Islam

Election of Provincial Assemblies held in 1952 were notoriously unfair and partial. People still remember the *jhurloo* of the Deputy Commissioner of Lahore who with a broom swept the polls in favour of the Muslim League.

The Constitution of 1956 remained in force for about two years and a half when some goondas entered the Assembly Chamber of East Pakistan to take part in a free fight that was going on between the members of the Assembly and started fisting and beating their opponents and causing mortal injuries to the Deputy Speaker. This show of democracy and parliamentary form of government compelled Iskandar Mirza, the Governor General, to interfere and he abrogated the Constitution on 8th October 1958, declared Martial Law and appointed General Muhammad Ayub Khan the Chief Martial Law Administrator. As power and responsibility cannot rest with two different persons, some three weeks later General Muhammad Ayub Khan deposed Iskandar Mirza and himself assumed the office of the President.

General Muhammad Ayub Khan's Martial Law remained in force for a long period—from the end of October 1958 to the beginning of May 1962. Ayub was a broad-minded man and during his Martial Law regime he made only one speech about Islam on May 3, 1959 at Darul Ulum-i-Islamiya at Tando Allah Yar Khan,

though casual references to Islam are also found in his other utterances. He said :

"Some 1,400 years ago Islam emerged on the scene as a great blessing. It was a dynamic and progressive movement which reshaped the entire pattern of life and gave a new meaning and purpose to man's endeavours. So long as this movement remained part and parcel of life itself, the followers of Islam continued to perform such memorable deeds in the world of science and practical knowledge as had no parallel in history. Unfortunately with the passage of time, Muslims at large sought to concentrate more on the dogmatic aspects of Islam and less on its inherent greatness as a movement.

"This resulted inevitably in a widening gap between life and religion which continues in our life today. Islam came into being essentially to reduce this gap but it is an irony of fate that its followers themselves were caught in the yawning gap.

"When the link between life and religion is snapped, life goes on in one direction or another but religion is reduced to a lifeless object incapable of resilience or progression, and it is continued in the precincts of mosques and mausoleums. Islam seems to have suffered this fate. While mankind has made great advances in science and philosophy, religion has remained static for centuries.

"The miracle of Islam was that it destroyed idolatry, and the tragedy of Muslims has been that they rendered religion into the form of an idol".

The speech is somewhat enigmatic but contains generalizations whose truth is born out by the history of Islam. While the famous jurisconsults of Islam were engaged in formulating dogmatic side of Islam and were compiling Islamic tenets in the form of propositions of law, the Muslims were still marching to conquer the world. The law is best formulated when it is applied to the facts of a case to produce a rational and equitable decision ; our jurisconsults were working in vacuity as they were not deciding any cases. With the exception of Abu Yusuf who was a Qazi in Haroonur Rashid's time none of these imams was holding any official position. They were working with such zeal, sincerity and self-denial that the generation

of their time and the succeeding generations had acquired such a deep respect for them that they came to treat their opinions as infallible and the last word on the subject they had dealt with. The scientific age of Islam ended with the death of the Moor Ibni-Rushad (1198) who had written a commentary on Aristotle and was therefore called in Europe the Commentator, and who had attempted to separate religion from science, putting the former above the latter. But when Ghazali who is known as Hujjatul Islam adopted Asharite doctrines, original research in law also came to an end. This is the phenomenon described by Ayub Khan in the speech just cited.

Ayub Khan promulgated his Constitution in the first week of May 1962. In this Constitution there were no fundamental rights and the word "Islamic" had been omitted from the name of the State. There was reference in the directive principles to Quran and Sunnah and the Islamic way of life but the responsibility of giving effect to laws made in pursuance of such principles was that of the organ of the state and nobody could question the organ's discretion. There was to be an Advisory Council of Islamic Ideology but it consisted of lawyers and administrators and the ulama of liberal views, one of them being the blind Hashim from East Pakistan who was quite modern in his views. He also set up an Islamic Research Institute of which Fazlurrahman, a modernist, was the President. But this proved to be a transistory phase and as Ayub had no political party of his own, for all political parties were under a ban, the conservative element in the National Assembly began to clamour for restoration of the Islamic features of the 1956 Constitution. Ayub could not resist the demand and they had to be restored. Ayub's views on Islam can be gathered from his Tando Allahyar speech and other stray reference to Islam and the fact that he relied on the broad principles and concepts of Islam and not on the letter of the Law as interpreted and enunciated by the four jurisconsults regardless of context or principle, or on the letter of the hadis which to him was no more than a history mingled with fables of the Sunnah of the Holy Prophet and his companions. Elections were held in 1964 under Ayub's Constitution, in which the right to vote was given to 80,000 basis democrats who constituted the Electoral College. Ayub was himself a candidate for the presidency. He was opposed

by Miss Fatima Jinnah but he succeeded in obtaining a fatwa from the Ulama, except by Maulana Maududi who gave a contrary fatwa, that a woman could not be the Head of State under Islamic Law and he defeated Miss Fatima Jinnah who was the Quaid-i-Azam's sister; so he had another spell of Presidency.

YAHYA

It is unnecessary to detail the circumstances under which Ayub had to part with power and to pass it on to General Yahya Khan. Yahya Khan disintegrated West Pakistan into its original provinces; he also promulgated a Legal Framework Order and ordered elections on the principle of one man one vote. In the elections Mujib, the East Pakistan Leader, acquired a preponderant majority in the National Assembly. What is relevant to the point I am dealing with is that under Art. 20 (2) of the Legal Framework Order the Constitution to be made by the National Assembly had to preserve "Islamic ideology which is the basis for the creation of Pakistan". The provisions relating to the name of the State, the Head of State, enabling Muslims to order their lives in accordance with the teachings of Islam, as set out in the Holy Quran and Sunnah, directive principles so as to promote Islamic way of life, and observe Islamic moral standards, to provide facilities for the teaching of Holy Quran, enjoining that no law repugnant to Holy Quran and Sunnah could be made, were the same as in the 1956 Constitution or the amended 1962 Constitution. As no agreement was reached between Yahya Khan and Mujib who stuck to his six points, disturbances commenced in East Pakistan. The Bengal Rifles and Mukti Bahni, a voluntary force raised by Mujib, mutinied and began killing the Bihari refugees. On March 1971 Yahya Khan to suppress the mutiny, sent armed forces from West Pakistan. It is alleged that these forces misbehaved and spread terror, with the result that people from East Pakistan began to flee to India. India had already the support of Russia, and on the plea that this vast immigration was affecting the economy of India, Indian forces were sent to East Pakistan and a war between Pakistan and India ensued with the result that the Pakistan army on 16th December 1971 had to surrender to the joint command of India and Bangladesh which had already declared its independence.

Demoralised and finding himself unable to control the situation Yahya Khan surrendered power to Mr. Z. A. Bhutto, the leader of the majority party in West Pakistan (Pakistan Peoples Party) and on 20th December 1971 swore him in as Chief Martial Law Administrator. His very first step as Chief Martial Law Administrator was the summary dismissal of 1,300 Government Officers and reducing the extent of the land to be held by Government servants to 100 acres, irrespective of the manner in which they had acquired it. Having acted for some time in that capacity he promulgated first the interim and then the final Constitution which came into force on 14th August 1973. Mr. Bhutto was elected as the Prime Minister of the country.

It is alleged that Mr. Bhutto was primarily responsible for the cessation of East Pakistan. In this connection it is stated that as the National Assembly was to sit at Dacca, Mr. Bhutto prevented members of the National Assembly from West Pakistan from going to Dacca, by threatening them that he would break the legs of those who went to Dacca. He also tore to pieces the Polish Resolution in the U. N. O. which had proposed that the two belligerant states should revert to their original positions before the war had begun. "You on that side and I on this side", is another expression which Bhutto is alleged to have addressed to Mujib.

In the Peoples Party's Manifesto, it was announced that Islam was the din of the party, socialism its economy, and equality the basis of its social organisation. The Constitution declared Islam to be the State religion and the name of the State still remained Islamic Republic of Pakistan. Fundamental Rights were defined and their enforcement guaranteed. The provision relating to minorities gave them the right to profess, practice their religion and to develop their culture, and subject to law and order and morality they were allowed to propagate their religion. One important fundamental right was stated in these terms: "The dignity of man and, subject to law, the privacy of home shall be inviolable; no persons shall be subjected to torture for the purpose of extracting evidence". The state was to ensure the elimination of all forms of exploitation, and the gradual fulfilment of the fundamental socialistic principle, "from each

according to his ability, to each according to his work", was enacted. In the propaganda in favour of the party, there was an oft repeated slogan that every person in the state will have sufficient food, clothing and shelter. A new provision relating to High Treason and its punishment by law was added. Treason was defined as abrogation or attempt to abrogate, subvert or attempt to conspire to subvert the Constitution by force or show of force or by other unconstitutional means. In the principles of policy, there was reference to Islamic way of life, compulsory teaching of the Holy Quran and Islamiyat, encouragement to learning of Arabic, to the promotion of unity and the observance of Islamic moral standards and to organization of Zakat, auqaf and mosques. There was also a separate part (IX) containing further provisions relating to Islam e.g. removal of repugnancy between the existing laws and the Holy Quran and Sunnah, and prohibition of future laws which were repugnant to the Holy Quran and Sunnah. There was also a provision relating to the Constitution of an Islamic Council.

The provinces complain that they were not permitted to exercise their rights which had been given to them by the Constitution. The matters on which they could legislate were defined in the concurrent list but the centre also had power to legislate on such matters, and if the centre exercised that power, the provincial law had to yield to the central law. The residuary subjects were of course for the Provinces to legislate upon, but it is difficult to see what these residuary subjects were, the Federal and the concurrent list having exhausted practically all important subjects of legislation. This was the position in normal circumstances.

But under Art. 232 the President could proclaim a state of Emergency, and such proclamation gave the centre the power to legislate on residuary subjects as well, and this proclamation unless disapproved at a joint setting by a resolution could continue indefinitely, as it did throughout Mr. Bhutto's regime. This helped him to acquire full control of the provinces. The proclamation of Emergency was made when Mr. Bhutto acquired power and continued throughout his regime. Thus the centre acquired power over the provinces, and the centre meant Mr. Bhutto. All power corrupts

and absolute power corrupts absolutely. Thus was Mr. Bhutto corrupted in the exercise of his powers absolutely. After the longest trial in history he has been convicted of murder and sentenced to death and the appeal from the conviction has been dismissed after the longest hearing and by the longest judgement in history. He has now been executed. Bhutto was extremely suspicious even of friends. He posted two plain-clothed constables wearing goggles at my own gate. Seeing them in hot weather at my gate, I questioned them, what were they doing. They said "under orders". I asked them to come inside the house, gave them chairs under the shade and do their spying from there. They came in on that day, on the following day, they disappeared.

The Constitution continued in force till the elections of March 1977 when the Opposition started a wide spread propaganda that the elections had been rigged by Mr. Z. A. Bhutto and were void. There were talks between Mr. Bhutto and the opposition for holding fresh elections but the position deteriorated to the extent that Chief of the Army Staff, General Muhammad Ziaul Haq, on July 5, 1977 took the administration of the country in his own hands and declared Martial Law throughout the country. He has totally committed himself to the introduction of Islamic system in the country and has postponed elections till such time as the misdeeds of Bhutto's regime have been inquired into and the society cleared of corrupt and evil elements, so that the elections may be held fairly and impartially in a clean atmosphere. He also aims at making Pakistan economically self-sufficient. How he can give effect to these objectives before the elections which he has promised to hold in November 1979 is a big qustion. *Prima facie* the task is too colossal for anyone whatever his powers may be. These matters will be dealt with later.

Chapter IX

GEOGRAPHICAL CHANGES IN PAKISTAN

Pakistan came into existence with restricted boundaries. It was not the Pakistan of which Rehmat Ali had dreamed nor as the Lahore Resolution had envisaged it. It consisted of a part of the Punjab, North Western Frontier Province, Sind, Baluchistan and East Pakistan. In the North-West Province, there were four Indian States, Dir, Swat, Chitral and Durband. They were all absorbed in Pakistan. Baluchistan had three such states, which formed the Baluchistan States Union. Baluchistan originally was administered by the Governor-General through an Agent but eventually became a Governor's Province. Karachi, originally the Federal Capital, was governed by a Chief Commissioner until Islamabad was made the Capital and became the nucleus of the Federal Capital area, and Karachi became the capital of Sind. The Indian Independence Act had provided that British suzerainty over the Indian States and all treaties with the tribal leaders had lapsed. A State could accede to either dominion or remain independent. Many States of which the rulers were Muslims but majority of the population non-Muslims acceded to India. Hyderabad, the biggest state, ruled by a Muslim but with a Hindu population and encircled by Indian territory was seized by India by police action. Junagarh and Manawadar whose rulers were Muslims but majority of the population non-Muslim acceded to Pakistan but were seized by India by force. The only States that acceded to Pakistan were Bahawalpur and Khairpur.

The Kashmir question still remains undecided though Pakistan

is in possession of a part of it for administrative purposes. Pakistan cannot recognise it as a part of it without its necessary consequence of recognising occupied Kashmir as a part of India. This issue is still alive and India is not honouring the commitments made by it. By its resolutions of August 13, 1948 and January 5, 1949 the Security Council had resolved that the question of accession of Jammu and Kashmir would be decided by the people of the State by means of a free and impartial plebiscite to be conducted under U. N. control, and Lord Mountbatten while accepting Kashmir's accession to India had written to the Maharaja that the question of accession would be decided in accordance with the wishes of the people of the State as soon as law and order which had been disturbed by an invasion of Kashmir by tribesmen had been restored. These being the facts India has no right forcibly to occupy a part of Kashmir and Jammu. The Lahore Resolution had envisaged Eastern Muslim Zone as an independent sovereign state but by a Resolution of the Parliamentary Board of the Muslim League, it was decided to make eastern zone consisting of East Bengal and Sylhet a part of Pakistan which was to have a federal form of Government, Eastern Pakistan constituting a single province as against the four provinces of West Pakistan. Some persons called this Pakistan a truncated Pakistan and an indefensible State which would collapse under the weight of its own problems. These apprehensions were to some extent true but the credit of keeping it alive and strengthening it from a scratch goes to that much-abused man Ghulam Muhammad and his coworker Ch. Muhammad Ali who later became a Prime Minister. Our border dispute with China was settled in 1962 when I was a Minister in Ayub's Cabinet. By this amicable settlement we gained more territory than we gave to China, for geographical reasons. So the North East boundary of Pakistan extends to the Chinese border. Hunza and Nagar are now a part of Pakistan.

LAHORE RESOLUTION

The Lahore Resolution, moved by Mr. Fazl-i-Haq, a Bengal leader, had envisaged an independent and sovereign state in the eastern zone where the Muslims were in a majority but before

Pakistan came into existence the Muslim League had agreed to accept that Zone as a part of the federation of Pakistan. Federation is always a difficult form of government but the inclusion of East Pakistan as a province of the Federation was a historical anachronism. It was separated from the West Wing by a distance of 1,000 miles across India and by about three thousand miles by sea along the coast of the same alien country, making travel by sea dangerous because the navy of India could at any time block this route as well. There was nothing common between the two wings except that both had Muslim majorities. Friction between the Centre and the Provinces, a usual feature in federation, was heightened between the Centre and the East Wing by the fact of distance, the difference in living between the people of the two wings and alleged exploitation by the Centre and the Western Wing.

I am fully acquainted with the terrain and people of East Pakistan. As Chief Justice of Pakistan I visited Dacca several times and during these visits used to go to different places in the interior. And as Chairman of the Delimitation Commission with Mr. Justice Kayani as member, who breathed his last in that province, visited every police station of the province. I noticed a marked difference between the people of that province and those of West Pakistan. Their language, customs and way of living were quite different from those of West Pakistan. Their music and dress were also different, the only difference in the dress of a Muslim from that of a Hindu being a lungi in place of a dhoti. Their food and drinking water were also different. They ate fish and rice and you could see that in every shallow pond, somebody was trying to catch a small fish with a small net or basket. Unless a village is fortunate to have a water hand pump, their source of drinking water is either a dirty pond (there is one even in the Government House) in which cattle also bathe, drink and excrete or a nearby stream or river.

In the performance of their religious rites they were more regular than people of West Pakistan but when you talked to them, they first attempted to avoid you and during the talk you could notice between them and yourself a strange atmosphere of aloofness. With the Hindus they talked more freely and intimately than with

westerners. When the Quaid-i-Azam declared Urdu as an official language of Pakistan there were riots in protest. The only thing common between them and people of the West was Islam.

But Islam means equality. On the establishment of Pakistan there were only a few ICS or PSP Bengali Officers, and the Officers who were sent from West Pakistan were not very different from the British Officers whom they had replaced. There was hardly any Commissioned Officer there in the Pakistan Army. Ayub Khan created a division of the army exclusively to be recruited from the local population, naming it Bengal Rifles, and reserved large sums for them to set up local industries. But very few people took advantage of this money and the funds so reserved had to be utilized by industrialists of the West Wing.

Before the Constitution of 1956 was passed, the National Assembly under the leadership of Chaudhri Muhammad Ali passed the Establishment of West Pakistan Act by which all the provinces of West Pakistan were amalgamated in a single unit called West Pakistan. The object perhaps was to bring about parity between Eastern and Western regions of Pakistan. This measure was unpopular and was looked upon with suspicion not only in East Pakistan but also in the provinces of West Pakistan. It worked for some time but the people of East Pakistan did not cease complaining of their exploitation.

When in 1962 I joined Ayub's Cabinet for a short time I found that no constructive work was being done by the Assembly. Every day was spent in listening to the long speeches of East Pakistan members of exploitation of East Pakistan and the step-motherly treatment of that province. Ayub used to listen to these speeches on the radio and was bored with what was happening as none of the ministers or members of the Assembly, whether from East Pakistan or West Pakistan, rose to rebutt these allegations. I spoke to Ayub and suggested that there could be no fusion between or common goal between the two provinces and asked him whether it would not be better that instead of putting up with this nonsense, to ask East Pakistan to take their affairs in their own hands. He suggested to me that I should talk about it to some influential leader from East

Pakistan. One day while I was talking to Mr. Ramizuddin who had been a Minister in Bengal or East Pakistan I broached the matter to him. His reply was prompt and straight. He asked me whether I was suggesting secession. I said yes or something like it as confederation or more autonomy. He said "look here we are the majority province and it is for the minority province to secede becuase we are Pakistan". The matter ended there and complaints in the Assembly continued as before.

When Mr. Bhutto having served in Ayub's Cabinet left or was dismissed by Ayub, he founded the Pakistan Peoples Party with a socialist programme as a part of its manifesto, in which everything under the sun was promised to the people—land, houses, clothes and many other facilities. The manifesto had a popular appeal and a strong Peoples Party emerged in West Pakistan in 1969 Election, though many members of it belonged to the aristocracy. By now Ayub was a sick man having suffered two heart attacks, and could not stand the frequent riots, series of daily processions, shouting of vulgar and indecent slogans, traffic blocks, closure of shops and damage to public and private property, which made orderly administration impossible and practically paralysed the government. Consequently by his declaration made at 19.15 hours on the night of 25th March 1969, he relinquished his office of President and contrary to his own Constitution handed over all powers to General Muhammad Yahya Khan, Commander-in-Chief of the Pakistan Army.

Yahya Khan forthwith assumed the office of President, abrogated the Constitution and put the whole country under Martial Law, assuming for himself the office of Chief Martial Law Administrator. By an order, dated the 30th March he dissolved West Pakistan, and substituted for it the previous four provinces, Punjab, Sind, North-West Frontier Province and Baluchistan. By another order he promulgated the Legal Framework Order by which he set up an Assembly consisting of 313 seats, 169 in East Pakistan and 144 in the four Western Provinces and centrally administered tribal areas. To the Provincial Assemblies he assigned 310 seats in East Pakistan and 211 seats in the four provinces of West Pakistan. Thus East Pakistan had a majority of seats both in the National Assembly and

the Provincial Assembly as against the four provincial Assemblies of West Pakistan. By Article 6 of the same Order he directed that elections would be direct and on the basis of adult franchise. The Constitution was to be framed by the National Assembly in 120 days.

There were certain other provisions in the Order which had to be incorporated in the Constitution. Under the leadership of Sh. Mujiburrehman, the Awami Party in its manifesto had made the following six demands known as Mujib's six points. These were :—

1. Pakistan to have a federal government and elections to the Assemblies to be direct and on the basis of adult franchise.
2. Defence and foreign affairs alone to be the two federal subjects.
3. Fiscal policy to be the responsibility of each federating unit.
4. Two separate currencies, one for East Pakistan and the other for West Pakistan, or a single currency with power for each province to stop movement of resources and capital from it.
5. Foreign exchange of each unit to be under the control of that unit.
6. And each unit to have its own militia or para-military force to contribute effectively toward national security.

The Constitution had to be made subject to certain restrictions which had been imposed by the Framework Order. Some of these restrictions, particularly relating to Islam, Quran and Sunnah, and enabling the Muslims to lead their lives in accordance with the teachings of Islam were not a part of the manifesto of the Awami League as enumerated in the six points. The six points if accepted, particularly the points relating to foreign exchange, currency and the export of capital and resources would have made a federation a farce and would have led to the disintegration of Pakistan. But Mujib went on proclaiming that he would strictly adhere to his six points. Thus Mujib created what may be called a Chauvenistic Bengali Nationalism, which meant strong hatred of non-Bengalis.

East Pakistan Rifles and the voluntary military organisation created by Mujib mutinied and refugees from Bihar, a neighbouring

Province in India, were the first target of Bengali hatred. Their indiscriminate massacre by East Pakistan Rifles, Mukti Bahni and infuriated Bengali mobs started in the spring of 1971, and General Yahya Khan had to send the army from West Pakistan to quell the disturbances and the mutinous Bengali Armies. No sane man could have taken that step with any hope of success other than Yahya. India had a pact with Russia and when the people from East Pakistan fled to India, she on the ground that such migration had been affecting her economy, sent her own armed forces and declared a formal war on Pakistan. The inevitable result followed—the Pakistan Army had to surrender to the joint command of India and Bangladesh on 16th of December 1971. About 90,000 army personnel from West Pakistan were made prisoners and sent to India.

Mujib had earlier been put on trial by Ayub Khan but the trial judge Mr. Justice S. A. Rehman and Mr. Manzur Qadir, the Public Prosecutor from West Pakistan, had to flee to save their lives from an attack by infuriated men from East Pakistan. During the present episode also he was arrested by Martial Law authorities and sent to Lyallpur where he was tried by a Military Court and sentenced to death, but the sentence was not executed because Yahya had to surrender power to Mr. Bhutto who remitted the sentence and sent him to East Pakistan where he formally declared the separation of East Pakistan, named the territory Bangladesh and became its head. In the elections held under the Legal Framework Order, which incidentally were the fairest ever held in Pakistan, Awami League had won almost all the seats in East Pakistan, and in West Pakistan Mr. Bhutto's Party had swept the polls. And though there had been negotiations between Yahya and Mujib and some representatives of West Pakistan, the National Assembly had never met, as the events described above had eclipsed a meeting of the Assembly.

Demoralised by the events mentioned above Yahya Khan finding himself unable to control the situation transferred power to Mr. Bhutto, as the leader of the Peoples Party and himself swore him in as Chief Martial Law Administrator on 20th December 1971.

Mr. Bhutto, who in the meantime had given a Constitution under which he was elected Premier, recognised Bangladesh as an

independent State on 23rd February 1974. Pakistan was thus reduced to the boundaries of West Pakstan and ceased to be the first Muslim State and the largest fifth State in the world. And a minister of the new cabinet formed in Bangladesh publicly declared that religion had been banished for ever from that region.

Who is responsible for this disintegration of the original Pakistan is a question beyond the scope of this book but there can be no doubt that it was Mujib's nationalism that won the day and Islam proved to be too tenuous a bond to keep the two wings together. Some critics hold that with the separation of the Muslim majority of the population, Pakistan itself became a misnomer but they forget that according to the Lahore Resolution, the new State in the Eastern Zone, was to be an independent sovereign State which could adopt any Constitution it liked. According to Yahya's statement published in the 'Nawai-Waqat' (28th December 1978) the responsibility for the cessation of East Pakistan rested solely with Mr. Bhutto. He was responsible for not allowing the National Assembly to meet at Dacca as he publicly said that he would break the legs of anyone from West Pakistan if he dared to go to Dacca to attend a meeting of the National Assembly. Near the end of his regime Mr. Bhutto to please the Muslims made some insignificant changes in the Constitution and the legal system for political ends. By a constitutional amendment he declared the Ahmadis to be non-Muslims without saying who was a Muslim, introduced prohibition on a somewhat stricter scale, stopped gambling and declared Friday a holiday.

Chapter X

NIZAM-I-MUSTAFA (TAXATION)

The first question that arises in Nizam-i-Mustafa is whether taxation in its current form is to be retained or substituted by the form in which it was in force in the time of Nizam-i-Mustafa. If nothing is added to the Islam that was practised at the time of Ali's death, most of the present taxes will have to go. This question which relates to the very existence of the state I propose to deal with first. There are four words used for taxation in Muslim books of Law:—

(1) Ushr
(2) Kharaj
(3) Jizyah
(4) Zakat.

The word Ushr is not used in the Quran. Doctors of Law infer it from verse 142 of Chapter VI, where it is enjoined in the words "but pay His dues on the day of the harvest". It is a form of Zakat and is some time mixed up with Sadaqa. Ushr is used for the levy of one-tenth on the gross proceeds of lands, the proprietors of which are or became Muslims or which the ruler divided among the troops. Such lands were called Ushri Lands.

Kharaj was levied on land conquered by Musims by force of arms and then given to their original infidel proprietors on payment of Kharaj. The ruler himself imposed Kharaj on the conquered infidels and then confirmed them in their possession of their rights, the common rate of which was fixed by imposing on every infidel a

tax which varied according to the financial position of the person taxed. For this purpose the infidels were divided in three classes, the rich, the middling and the poor. The rate varied from 48 dirhams to 12 dirhams annually.

After the Islamic Republic the laws relating to finance, commerce and constitutional law assumed a temporal aspect and various ordinances and Qanun-namas were issued by the various Governors of the territories which were essentially temporal in character. Egypt went so far away from the original Islamic system of taxation that in the time of Sultan Salahuddin, a pilgrim tax was imposed and strictly enforced which the pilgrims who disembarked at the ports of Aedal and Alexandria had to pay. But such laws were not a part of Nizam-i-Mustafa.

If we intend to introduce in Pakistan a fiscal system that was in force during the life of the Holy Prophet and the Islamic Republic (and such system alone can be covered by the demand for Nizam-i-Mustafa) we will at once be confronted with difficulties. No state can function, properly and efficiently, unless it has a sound financial system. On the subject in question, there can be two views; first, that any tax which is not contrary to the Quran and Sunnah can be legitimately levied. It is essentially a negative view but it makes lawful all taxes which a modern state levies, namely, all taxes which were not levied during the Nizam-i-Mustafa. The other view which may be called a positive view is implied in the demand for Nizam-i-Mustafa and that is that only those taxes can be levied which were levied in that Nizam. It is the latter kind of taxation which the Ulama have in view. If this assumption is correct we will have to analyse the system of that taxation, ignoring the system of the Umayyads, the Abbasids and other Muslim States that came into existence after the end of the Islamic Republic.

The financing institution during the Nizam-i-Mustafa was baitulmal, the State treasury. What was baitulmal, what were the sources of its income and how was the money collected in it expended are the question involved in this view.

According to Hidaya baitulmal was the public treasury no part of which the ruler was allowed to draw for his personal use. He

could spend the money in it only for the public good. Its sources of income were (1) Zakat or the legal rate upon land (usufruct), personal property and merchandise owned at least for one year, which was to be expended on particular classes of Muslim Community e.g. the poor and the destitute, pious works, giving of alms, holy war, to ransom Muslim slaves, and travellers. (2) Khums, namely 1/5th of property seized in war was the property of Allah and the Holy Prophet which was to be spent in the interest of community as a whole. The remainder was to be expended on orphans, the poor and the travellers. The fourth-fifth share of the Mujahids if deposited in baitulmal was never the property of the State, its ownership vesting from the date of its deposit in the baitulmal in Mujahids and was being held in trust for them. (3) The produce of mines and treasure trove. (4) Property of which there was no owner-bona vacantia. (5) The Jizyah or the poll tax levelled on unbelievers.

('Hidaya', Arabic Ed., Vol. I, p. 452).

KHUMS

Khums was the product of Religious wars, the Jihad. The Jihad in its primitive sense is now an obsolete idea and if there can be no Jihad in its original sense, there can be no division of looted property between the State and Mujahids. Battles are not fought by camel riders and horsemen, or with swords, a factor which was responsible for early Muslim conquests. A well organised and disciplined army equipped with sophisticated weapons is a regular feature in all modern states. Furthermore, the possibility of a conflict between two Muslim States cannot be ruled out. We have had some recent instances of it, including one in which Pakistan had to engage itself. And Khums would be inapplicable to such instances.

A radical change in Khums was brought about by the second Caliph Hazrat Umar. When the Mujahids went to war, usually they took their families with them and after the subjugation of the territory built for themselves temporary houses of reeds and settled there in what may be called military cantonments. When in A.H. 16 after the conquest of Jerusalem, Hazrat Umar visited Syria, he divided the troops in corps, each corp comprising several tribes and assigned to them permanent camps. In Syria such military camps already exist-

ed and Hazrat Umar approved them. Such military stations also existed in Damascus, Lydia and Ramla. In Babylon, he established a similar station as well as in Basra and Kufa. When the conquered territories were under full control, the soldiers converted their reed huts into houses built with brick and mortar. Out of these military stations grew prosperous towns which later proved to be an important factor in the cultural development of Islam. The new military station in Egypt was in the neighbourhood of Babylon out of which grew the town of Fustat which remained the capital of Egypt until Cairo was built in 957 A. D.

The practice of soldiers living with their families in permanent military camps created in them a desire to acquire land. The part of the most fertile crescent, namely, the plain between the Euphrates and Tigris had a special attraction for the soldiers who claimed four fifth portion in the conquered land and the inhabitants of the territory. In support of their claim they relied on the doctrine of Khums. On this Hazrat Umar took an important decision. By an Ordinance he ruled that the conquered territory was an inalienable state property for all times, and that the produce of the land would be used for the common good. But the original inhabitants were allowed to keep the land in their possession in Egypt and Babylon. He forbade all Arabs even to cultivate the land and did not allow the Governor of Egypt, Amr Ibn-i-Ali, to build a house in the cantonment of Fustat. But to compensate the soldiers he allowed them a share in the baitulmal. This arrangement was in accordance with which the surplus wealth was distributed among the faithful by the Prophet himself. This Ordinance satisfied the soldiers as the share allotted to each soldier was far in excess of the sum that he had otherwise to pay and could obtain from the land if he received 4/5th of it.

The baitulmal by this time had begun to swell into immense revenues derived from Ushr and from subject races as Jizyh and Kharaj and Hazrat Umar established a department called the Diwan, which was managed by a state official. Originally only Jews and Christians had to pay Jizyah but subsequently Majusis of the Sassanide Empire also were included in this category. As against the

payment of this tax, the Muslim State and every Muslim was to guarantee protection of life and property of the tax-payers and they had full freedom to practise their religion. On the same principle, the third Caliph Hazrat Usman extended the system to the Berbers of North Africa.

The wealth in the baitulmal was to be distributed among all the Muslim inhabitants of Arabia in accordance with a list prepared by Hazrat Umar. Women, children, the needy and the disabled had a share in it. The Mujahideen received a regular pay from it. Thus all the able-bodied persons became a regular standing army of Islam.

In allotting a share in the baitulmal certain factors were taken into consideration, as for instance, the kinship with the Holy Prophet, early conversion to Islam, gallantry in battle etc. and the distribution was not uniform or per capita. If after paying the allowance to the soldiers, there remained a surplus, it was to be spent on the kinsmen of the Holy Prophet, orphans and travellers.

ZAKAT

Zakat is one of the five pillars of Islam, the other four being (1) belief in one God and His attributes enumerated in the Quran. (2) Salat (prayer). (3) Saum (fast) and (4) pilgrimage to Kaba.

There are certain misconceptions about Zakat in the common man. One such misapprehension is that Zakat is leviable on the total wealth of a person at the rate of 2½ per cent. This is incorrect as certain persons and properties are exempt from Zakat and the levy differs from property to property, together with the rate payable. Some of the properties are subject to this levy if they have been owned by the assessee for full one year.

Zakat is obligatory on all Muslims but certain persons are exempt from this levy. They are :—

(1) Minors.

(2) Insane persons.

(3) All persons in debt whose debts exceed the amount payable as Zakat.

(4) And slaves employed as servants.

Properties which are exempt from Zakat are :—

(1) Necessaries of life, like a dwelling house, wearing apparel and household furniture.

(2) Cattle kept for immediate use.

(3) Arms and weapons of war.

(4) Books of science and theology.

(5) Tools of artizan.

(6) And precious stones.

Properties subject to Zakat are :—

(1) Camels, horses, bulls, cows, buffaloes, goats and sheep. If their number exceeds a certain figure, Zakat is leviable on them according to a graduated scale.

(2) No Zakat is due on silver of the value of less than 200 dirhams unless it has been owned for a full year in which case the Zakat due is five dirhams. No Zakat is due upon an excess above 200 dirhams till such excess amounts to forty dirhams when the Zakat due is five dirhams and for every excess above forty, five dirhams. Substances in which silver predominates are treated as silver, and the same rule applies to all articles such as plate, cups and goblets.

(3) No Zakat is payable on gold under the value of 20 Misqals. If the quantity of gold exceeds 20 Misqals, the Zakat is at the rate of one half Misqal on every 20 Misqals.

(4) Articles of merchandise are to be evaluated and if the value exceeds 200 dirhams the Zakat due is 2½ per cent.

(5) Mines of gold, sliver, iron, lead or copper are subject to a Zakat of 1/5th but if the mine is discovered within the precincts of a person's own house, nothing is due. And if a person finds a buried treasure a fifth is due on it.

(6) *Produce of Land.*—Upon everything produced from the ground, the Zakat is one-tenth (Ushr) whether the soil be watered by the overflow of rains or periodic rains. But if the soil is watered by buckets, machinery or by camels its produce is subject to 5 per cent.

(7) Honey and fruits collected from wilderness are subject to a tithe.

The beneficiaries of Zakat are:—

(1) Faqirs or persons possessed of little property.

(2) Miskins or persons owing no property.

(3) The collectors of Zakat.

(4) Slaves.

(5) Debtors.

(6) Persons who are in the service of God or take part in religious war.

(7) And travellers.

The rules mentioned above have been taken from 'Hidaya,' a standard book on Sunni Law, written by Sheikh Burhanuddin Ali (530 to 590 A.H.) more than 200 years after the authors of Siha Sitta, the six correct books compiled by the six traditionalists. The upshot of this discussion is:—

(1) That in a modern state purporting to be an Islamic State one important sources of income of public treasury, the Khums, is no longer available. Mines and treasure trove and bona vacantia i.e. property of which there is no owner, are already covered by the existing law. The only source left therefore is Zakat including Ushr and Jizyah.

The Arabs were generally an opulent people because of their 4/5th share in Ghanima and could easily pay the Zakat. In fact this was their main source of wealth during Nizam-i-Mustafa. Now the mode of acquiring wealth is fundamentally different from that which was current during that Nizam, and people, in the presence of other taxes, will find it hard to pay the Zakat which is prescribed by the canon law.

Though there was a Zakat collector and a part of it went to the baitulmal, people could bestow Zakat themselves on those entitled to it. There were seven classes of persons who could have the benefit of Zakat; this voluntary expenditure on the needs of the poor was in fact a recognised mode of spending Zakat. There is hardly any instance, except that of *Mussalma Kazzab*, where the State used

its coercion power to collect Zakat. Under the Zakat and Ushr order the government itself has undertaken the collection of Zakat, denying to a person the right of choosing himself the object of his bounty. Further the Zakat collected in one city could not, except in a few cases, be transferred to another city. Such transfer was considered to be abominable.

Zakat on bank deposits, which are a mixture of interest and capital, is a recognition of interest as lawful whereas it is unlawful. Ushr is leviable on gross produces of the land but an agriculturist these days has to spend a large amount on fertilizers, insecticides and mechanical instruments. In fact because of these sophisticated methods of cultivation agriculture has come to be considered as an industry. Apart from the expenditure mentioned above, one has to sink his capital in tubewell, tractors, drills and harvesters and according to the ordinary principles of accounting, he is entitled to depreciation. The expenditure on diesel is also considerable. All this expenditure was foreign to the system of cultivation during the Islamic Republic.

The people inhabiting inner Arabia led a roving nomadic life, and the greater part of Arabian desert, the rubul Khali was and still is unapproachable wilderness. The nomads owned only camels and horses and other animals. Now nobody owns that number of camels and horses on which Zakat may be levied. Gold and silver either in the form of ornaments, bullion and utensils are still owned by certain persons and Zakat may still be levied on them but the collection of Zakat on these items will be extremely difficult and insufficient. The produce of barani land can be taxed at the rate of one-tenth (Ushr) and the land artificially irrigated by wells or machinery is subject to Zakat at the rate of 5 per cent. But in modern times the levy on the usufruct of land is not purely a religious question; it is mixed up with an economic question, namely, the effect of any levy on crops and on agricultural production. The persons running the government will have thoroughly to examine this question with the help of economic and agricultural experts. There remains the question of bank deposits. Here the issue will be whether such deposit or moneys kept in banks can be treated as taxable on the

analogy of dirhams and misqals, and being already subject to wealth tax can be subjected to further levy. This question will not be separable from that of interest, a debated issue, and having far-reaching consequences on trade, industries and commerce. Any bungling with or superficial view of this question may raise further issues and settling one question may give rise to further questions, too complicated to be easily solved. In fact if interest is the root of social evils as stated by Nawabzada Iftikhar Ahmad Ansari, Minister for Religious Affairs, it should be the first to be tackled.

The answer to this fiscal question depends on the decision to be taken on the broad issue whether Nizam-i-Mustafa is a panacea for all the ills of the world or whether revelation having ceased for ever after providing certain rules of guidance, man is free to manage his affairs according to the conditions of the time and territory. Modern thinkers, even a few Ulama of the orthodox school, take the view that Muslim society can do whatever it likes provided what is done is not contrary to the Quran and the Sunnah. Allama Iqbal considered that a Republican form of government and a legislature of the modern type is perfectly consistent with the Islamic principles. Maulana Abul Ala Maududi substantially takes the same view by his theory of unoccupied field, though he adds ijma to the occupied field. On that view subject to repugnancy, all modern tax laws like the Import and Export duty, excise tax, income tax etc. are valid. But this theory explodes the view that the laws prevailing before the end of Islamic Republic can provide a code of taxation sufficient for a modern state. But the taxes should not be opposed to the Quran and Sunnah. If the rules of Zakat, as stated in the Hidya, are taken from the Quran and Sunnah and it must be presumed that they are so taken, and the Quran and Sunnah except, inter alia, the dwelling house and furniture, it would follow that imposing of taxes on residential houses and furniture would be against the Quran and Sunnah.

The Muslim Laws of Finance disclose, on deep scrutiny, certain principles and we do not go beyond Islam if we adopt these principles.

A modern state has to provide for its protection; for that object it has to maintain an army which by the use of sophisticated weapons

of war may be able to repel any attack on its territory. It has also to bear the costs of administration. To keep pace with the advancing world it has to increase its industrial and agricultural production and engage in international trade. To keep the people happy and prosperous it has to remove, as far as possible, disparity in wealth, by suitable legislation. It has to provide hospital, health centres and educational institutions, both for general education and technological instruction. It is only in this way that class hatred between the rich and the poor can be avoided, and the idea of Muslim equality and brotherhood can be realized.

For the attainment of these ends, all fiscal measures may be taken provided they are not contrary to Quran and Sunnah and we need not confine ourselves to the fiscal system of the Islamic Republic (Nizam-i-Mustafa) for we are separated from that period by 13 centuries, and during this time conditions have radically changed. The camels and horses have lost their importance; and the form of wealth has changed. We can neither have a khalifa of that period or the simple society which he governed. Above all the simplicity of the faith has disappeared because our doctors of law have introduced into Islam so many complexities that they cannot tolerate any difference of opinion and unhesitatingly dub those who differ from them as Kafirs. Will you be surprised if I tell you that in a recent issue of the Urdu Weekly 'Sahafat', for the week 23rd to 30th January 1978, in the long list enumerating several sects, the Quaid-i-Azam and Allama Iqbal are also included as Kafirs. This was the view of an important leader of the Barelvi Sunni sect (see also Weekly 'Badban', for September 14, 1978, p. 23).

The present taxes were not a part of Nizam-i-Mustafa and are the result of changed conditions. The view that everything is possible provided it is not contrary to Quran or Sunnah alone can save these taxes, because in the Quran and hadis there is nothing against most of them. But in that case you will have to say good bye to the claim that Nizam-i-Mustafa or Quran and Sunnah provide solution of everything under the sun and that what is needed is interpretation and not legislation.

As all wealth and all agricultural produce is liable to pay Zakat, the yield from this source will be considerable, and our

Ulama think that no other tax will be justified. (Shah Ahmad Nurrani). But they seem to have no idea of the needs of the State. Therefore other taxes will have to be levied though the present taxes will require revision, to make them equitable. These taxes must, however, not be repugnant to Quran and Sunnah. Mufti Mahmood is also of the view that apart from Zakat and Ushr no further tax will be necessary but at the same time he says that Pakistan must have an atom bomb.

('Pakistan Times' 8th June, 1979).

Chapter XI

NIZAM-I-MUSTAFA (Islamic Democracy)

There have been six Martial Laws in about 30 years and each martial law has been preceded by a democratic constitution. Therefore I feel ashamed when the Government and our leaders are insisting on the restoration of democracy which is essentially a western idea. Democracy in the form it is demanded today was not a form of government during the life of the Holy Prophet and the four Caliphs that succeeded him.

There are three requisites of this democracy (1) adult franchise (2) periodic accountability (3) two or more parties (4) educated electorate. None of these requisites is to be found during the Nizam-e-Mustafa.

Therefore if we want a form of government that was in force during the Islamic Republic, the first question that arises is whether the democratic government was in force in that period.

Before the death of the Holy Prophet, no successor was appointed by him because he was the last of the Prophets. To that status none could aspire but there was an Islamic state for which somebody had to be appointed to run it. On this issue there was the possibility of a conflict between the Muhajirs and Ansars.

Syed Amir Ali says that according to the Arab custom Hazrat Abu Bakr was appointed as he was the senior member of the Prophet's family. But the actual fact is that since in the illness of the

Holy Prophet Hazrat Abu Bakr had been deputed by him to lead the prayers, Hazrat Umar, after consultation with the Companions, proclaimed him as the Khalifa. Therefore it is not right for Syed Amir Ali to say that Abu Bakr was appointed the Caliph according to some Arab custom, though the services of Abu Bakr demanded that he should be appointed. Hazrat Umar was nominated Khalifa by Hazrat Abu Bakr himself. When Hazrat Umar in a wounded condition was lying on bed in death illness, he appointed a committee of six persons, including Hazrat Usman, to choose his successor, and this committee chose Hazrat Usman as Khalifa. On Hazrat Usman's death there were many persons from Madina present and they chose Hazrat Ali as the Caliph, but Hazrat Ali refused saying that he would accept the office if people assembled in the mosque would take the oath of allegiance to him. Accordingly people gathered in the Mosque and chose him as the Khalifa.

There was not a glimpse of adult franchise in these appointments though after the appointment of the caliph the sardars of different tribes came to the caliph and gave their hands in Bait (allegiance) to him. This practice signified that all the members of the tribe of the sardars who took the oath of allegiance also took that oath. But this was ex post facto allegiance and not the adult franchise.

As all Khalifas were murdered except Abu Bakr there was no need of accountability. But the fact remains that the Khalifa was not appointed for a fixed period. Therefore Hazrat Ali also was not chosen on the basis of adult franchise for a certain term. But democracy has, besides being a form of government, other qualities e.g. equality, tolerance, social justice, equality before the law, and these values are found in abundant measure in the history of Islam. But here we are talking of democracy as a form of Government. With the battle of Jamal, there was civil war in Arabia. Muawiya who was a provincial governor, declared himself independent and a Caliph and this was an end to the Khilafat-i-Rashida. Muawiya entered into a treaty with Hasan who gave up his right of Khilafat in return for a huge pension. Soon it was followed by the murder of Hussain in the time of Yezid who had succeeded Muawiya.

Democracy as a form of Government is essentially a western idea. Whether you take it from England, or from America it remains

an alien idea. In England, originally the King was an absolute Monarch, and it was not until June 15, 1215 when King John was compelled to sign the Magna Carta at Runnymede, the foundation of English political institutions, that the right of the people was first recognised. Since then by custom and statute was evolved the idea of Parliament with the King, the House of Lords and the House of Commons as its three branches. During the last 800 years, the Kings prerogative has been abridged until the Crown has been reduced to a figurehead and his power to withhold assent to the bills passed by the House of Commons and the House of Lords has become a formal act. In France the Revolution made the people supreme and American forefathers took the English and French ideas with themselves to America and after a bloody war won their independence from England and made a short democratic Constitution which by judicial interpretation has come to cover every aspect of American citizens' life as it is today.

In each of these countries democracy is based on adult franchise and accountability means a term for members of legislature i.e. "fresh elections on the expiry of that period." An educated electorate of two or more parties is a necessary part of democracy.

In Nizam-i-Mustafa there were no parties, nor can there be now unless democracy is separated from religion belying the claim that in Islam religion cannot be separated from politics. And if you have parties in Islam the result will be that Islam will be divided into sects which is not a very desirable result.

And women had no votes in Nizam-i-Mustafa. In England women got their right to vote in 1928 after a bitter struggle. Turkey recognised their right to vote in 1934. This is an instance where Islam has assimilated a purely Western Institution. In Ayub's election against Miss Fatima Jinnah, the Sister of Quaid-e-Azam, in 1964, the Ulama (except Maulana Maududi) had given a fatwa that a woman cannot be the head of state. As for an educated electorate, there was none in Nizam-i-Mustafa. Thus none of the four conditions essential for modern democracy existed in that Nizam. The question therefore is whether the Ulama place their claim to democracy on religion or independently of religion. The

democratic system as obtained in Pakistan was studied by a Commission of International Jurists and they came to the conclusion that it had signally failed. Ayub appointed a commission to inquire into the matter, headed by Mr. Shahabuddin, a Chief Justice of Pakistan, and they also came to the same conclusion. The commission recommended the Presidential System, with matriculation as the qualification for the elector. We started with a democratic system and it failed. Ch. Muhammad Ali's Constitution worked for less than two years and it failed. In Eastern Pakistan during a session outsider goondas entered the Assembly Building; there was a free fight between the legislators and the goondas who took sides with the fighting legislators, with the result that the Deputy Speaker was killed. Thereupon, seeing that democracy would not work, Iskandar Mirza abrogated the Constitution.

In Nizam-i-Mustafvi there was an advisory council called Majlis-i-Shura or Ashab-i-Hill-o-Walaqd. But its functions were limited to the rendering of advice; at the most it was like a cabinet, and although its members were learned in law and were acquainted with the Sunnah of the Prophet, they too were not elected and were nominated because of their piety and learning.

The Ulama of the Pakistan National Alliance seek to enforce in the country Nizam-i-Mustafa and democracy. The very fact that these two things are claimed separately or independently of each other shows that democracy does not fall within Nizam-i-Mustafa. Religion and politics being one to them, the claim for Nizam-i-Mustafa should include in it democracy and should not be demanded separately. The fact that they are demanding democracy separately shows that they are conscious of the fact that democracy is borrowed from the West.

At present there is no religious State in the World except the palace of Pope. Khomeini in Iran has said that anyone adding the word democratic to the Islamic Republic of Iran will be guilty of treason. Even Israil has a modern democratic Constitution. Saudi Arabia is not a religious State in the true sense of the term. The present King was not elected; Ibn-Saud revolted against the Khilafat of the Turks and founded what is now called Saudi Arabia.

He has acquired importance because of his oil and the money he gets for the sale of oil is treated by him as his private property. Yahya was the first person to say that "Islamic Ideology which is the reason for the creation of Pakistan shall be preserved", (vide the Legal Framework Order (Art. 20)). And now General Ziaul Haq has said that Islam is the ideology of Pakistan and he will introduce Nizam-i-Mustafa or Islam in Pakistan in its totality. But the question is what Islam ? That of the Jamaat-i-Islami or that of the Ahrar (Nawabzada Nasrullah Khan's Islam) or that of Jamiatul Ulama-e-Islam or that of Shias of Ali.

Muslims are divided into various sects. The dispute between Shias and Sunnis goes back to the rivalry of Banu Ummaya and Banu Hashim, long before Islam. The Shias don't consider Sunnis as Musalmans and Sunnis don't include Shias in Islam. Deobandis (Mufti Mahmood) and Barelvis (Maulana Shah Ahmad Nurani) are at loggerheads with each other and consider their opponents as Kaffirs. Jamaat-i-Islami has its own ideas about Islam. It was Bhutto's hatred that brought them under one flag. But enmity to a person can never be a common factor for ever so far as Islam is concerned. I think the best thing for General Muhammad Ziaul Haq to do is first to find a common denominator by which Islam may be defined and leave the rest to others to wrangle about. You cannot have one Islam for Pakistan, another for Iran, another for Egypt, another for India where the Muslims are the second largest minority. And you cannot forget the Shias in Pakistani Islam; they are the most educated and most powerful section of Islam in Pakistan.

The idea of nationality has been taken from Europe but this idea, except for certain purposes, is foreign to Islam—one millat. Allama Iqbal, on this aspect of the question, influenced by a passage from Zia Gokalp, says:

"These lines clearly indicate the trend of modern Islam. For the present every Muslim nation must sink into her own inner self, temporarily focus her vision on herself alone, until all are strong and powerful to form a living family of Republicans. A true and living unity, according to the nationalists thinkers, is not as easy as to be achieved by a merely symbolical overlordship. It is truly mani-

fested in a multiplicity or independent units whose social rivalries are adjusted and harmonised by the unified bond of common spiritualism. It seems to me that God is slowly bringing home to us the truth that Islam is neither nationalism nor imperialism but a league of nations which recognises as natural boundaries and racial destinations for facility of reference only and not for restricting the social horizon of its members."

But the lectures "Reconstruction of Religious Thought" from which the above quotation is taken were delivered 50 years ago and in the meantime the world of Islam has drifted away from what it was in the Allama's thought. Now Iran has become Islamic Republic; Afghanistan has become socialist and so have Algeria, Iraq and Syria. Bangladesh has banished Islam from its collective life. Libya, Morocco and Tunisia are developing their national life and India which has the second largest number of Muslims is under a foreign government and Indonesia is developing its resources with no reference to other Islamic countries. Egypt, for its deal with Israil, is hated by all the Arab countries. Sudan stands alone not being interested in other Muslim countries. This being the position the Allama's League of Muslim nations remains a consummation devoutly to be wished. The idea of one millat can at present only be seen on the occasion of the Hajj. Some of the States mentioned above may be said to be sinking into their inner selves, but they are not doing so, with the object of ultimately forming a league of Muslim nations.

Arabs nationalism gives the go by to a basic principle of Islam—one Millat. They are endowed with oil, a free gift of nature and not the result of human effort. But this monopoly they cannot enjoy for ever. Sooner or later, estimates are 10 to 15 years, these oil wells are likely to be exhausted and if during that period they do not become industrial and manufacturing countries they will revert to their previous position. The wealth they have acquired from oil and which is invested abroad can give them five years more of prosperity.

Keeping these difficulties, particularly those relating to interest and punishments in view, the obvious course for Pakistan is to have a secular state and in doing so it will be realising the ideal the Quaid-i-Azam had placed before us. As will be shown later we are

having at present 90 p.c. secularism. A Muslim already knows what are haquq Allah (rights of God) and as for reformation of society, Martial Law has not been able to do much and ordinary law will achieve no better result.

Democracy based on adult franchise, is hardly suitable for this country. When elections are held, God only knows how many parties there will be in the field?

A government formed with several parties will have no unanimity as the parties are bound to differ in important matters. It will fail as previous governments have failed. Ayub's system will perhaps work better provided you do not confer other rights and powers on basic democrats.

The 1956 Constitution which Muhammad Ziaul Haq has in view for the next election which will be held on 17th November give the President unlimited powers to dismiss the Prime Minister and the cabinet and with so many parties it will be easy for the President to find an occasion for dissolving the Assembly. The new Assembly will not be different from the Assembly which invited Martial Law in 1958.

In Nizam-i-Mustafa there was no form of government corresponding to democracy, but it does not mean that there was no law of government in that Nizam. No state can be run without a system and there was a system by which Government was run in Nizam-i-Mustafa and the system was that persons, including the companions of the Prophet, chose for life a person who was known for his piety and he governed the State in accordance with the Quran and Sunnah. Thus the present demand for democracy by the religious leaders comes into conflict with that system. The Pakistan National Alliance therefore is demanding two inconsistent things when they ask for the introduction of Nizam-i-Mustafa as well as democracy in the western sense. Khomeini is right when he says that any one adding the word democratic to the Islamic Republic of Iran will be guilty of treason as democracy is a western idea.

SEPARATE ELECTORATES

In Quaid-i-Azam's view there would have been no separate electorates for minorities. Professor Abdul Ghafoor says that the

constitution will have to be amended to give them separate electorates. This is incorrect as non-Muslims and women were chosen under the Constitution of 1973 by the Muslim Members, under a law (S. 7 (2) of the National and Provincial Assemblies, Reserved Seats Order). Professor Abdul Ghafoor should honestly admit that separate electorates are a necessary result of the system that the Government is trying to enforce. The question whether they are so doing at the minorities request or because they are in their interest is quite irrelevant. The real point is whether they are members of the nation as conceived by the Quaid-i-Azam or not. If not, why give them the status of law-makers in an Islamic State.

WOMEN

The further question that arises is whether women had a right to vote in the selection of the Khalifa. We boast that we gave rights to women which they did not enjoy in pre-Islamic period. That is true because Islam raised women from mere chattels to a dignified status and in so many other respects ameliorated their position. But when Miss Fatima Jinnah opposed Ayub in the Elections in 1964, the Ulama (including Maulana Maududi) gave a fatwa that a woman can be the Head of State. If she cannot occupy an office of responsibility then how can she become a lawgiver?

Quite recently Maulana Maududi in stating the principles of an Islamic State has stated as the sixth principle that no woman can occupy an office of responsibility ('Nawa-i-Waqt' dated 26th February 1979), and this has been confirmed by Mufti Mahmud who has said that Islam prohibits rule by a woman, ('Pakistan Times,' July 4, 1979). This can easily be construed as denying to a woman the right to occupy the office of a minister or the head of an institution, even the right to vote to half the population of Pakistan ('Sadaqat' dated 7th March 1979). If a woman can be the head of State, then how can Maulana Maududi now say that she cannot hold any office of responsibility, having previously said that a woman could occupy the office of Head of State ('Sadaqat' dated 7th March 1979). In England women got a right of vote after a bitter struggle in 1918 if they were over thirty. In 1928 this restriction was removed and women got the suffrage like men. Pakistan was born with that

right recognised for all women like men. How do our Ulama can say that in Islam this right exists for a woman when Maulana Maududi says that a woman cannot occupy an office of responsibility. Or are we separating Nizam-i-Mustafa in two separate parts, democracy and Nizam-i-Mustafa. In his statement Nawabzada Iftikhar Ahmad, Minister for Religious Affairs, has given a hint that Jizyah will be levelled on all non-Muslims. Jizyah in Nizam-i-Mustafa was a part of baitulmal. Its levy will make the non-Muslims second class citizens of Pakistan. Not only this will be contrary to Fundamental Rights, but will create hatred in the minorities, and will be another departure from the Quaid-e-Azam's views. Mufti Mahmood has said that Jizyah will be levied on non-Muslims who are zimmies, ('Pakistan Times' January 9, 1979) whatever name you give to this tax. But Professor Ghafoor Ahmad has said in the 'Pakistan Times' of 31st January, 1979 that Jizyah will not be levied on non-Muslims as they don't belong to a conquered country. Can they not agree on a simple question like this? It is now understood that Jizyah will be levied on all non-Muslims ('Musawat' of 5th July 1979).

As all wealth and all agricultural produce is liable to pay zakat, the yield from this source will be considerable, and our ulama think that no other tax will be justified. (Shah Ahmad Nurani). But they seem to have no idea of the needs of the state. Therefore other taxes will require revision, to make them equitable. These taxes must, however, not be repugnant to Quran and Sunnah. Mufti Mahmood is also of the view that apart from zakat and ushr no further tax will be necessary but at the same time he says that Pakistan must have an atom bomb. ('Pakistan Times' 8th June 1979).

Chapter XII

PUNISHMENT IN ISLAM

There has been some criticism in Western Countries on public hangings and whipping of criminals in Pakistan during the Martial Law Regime and the whole system of punishment in accordance with what is described as Islamic Law has been the subject of comment in Western countries. Before we approach the system of punishment in Islam, some preliminary observations are called for.

Pakistan is a member of the United Nations which in 1948 adopted a Declaration of Human Rights. Recently it passed a Covenant on Civil and Political Rights which provided the right to be protected from torture and other cruel, inhuman or degrading treatment. But this Covenant has not yet been ratified by Pakistan nor has it been incorporated in the legal system of the country. This Covenant, however, shows how the collective conscience of the world looks at cruel and inhuman punishment. Though the Constitution of 1973 is in abeyance for the time being, its Article 14 declares that "the dignity of man and, subject to law, the privacy of home shall be inviolable". It will be noticed that while the inviolability of home is subject to law, the inviolability of the dignity of man is absolute and not subject to any qualification. Whether a law violates the dignity of a man is a question of fact and depends upon what the dignity of man implies and whether the law violates that dignity. All punishments which are inhuman and cruel are violative of the dignity of man. Freedom from cruel and inhuman punishment is a continuing concept but the whipping post may be an acceptable form

of punishment to one generation yet seem inhuman to another. In a recent decision of an international court whipping has been held to be inhuman and cruel, and therefore violative of the Charter of Human Rights. Solitary confinement and barbarous invasion on human personality may also come under the definition of inhuman and cruel punishment. Even hanging may be considered as a violation of human dignity and in some countries capital punishment has been abolished on the ground that such punishment is inhuman. The question whether a particular act, even where sanctioned by law, is cruel or inhuman depends on what view the contemporary society takes of such punishment, just as what is obscene depends on the prevailing state of opinion of the community. Therefore judges in different countries may give different answers to the question.

Elsewhere I have mentioned the incident that occurred while I was attending a session of a Committee of the United Nations. The subject was the abolition of the Capital Punishment and I spoke in favour of retaining the penalty. The same evening while I was sitting at a dinner with the young wife of a British Officer she happened to inquire from me how criminals are hung, and how many in one year in Pakistan. I gave her a description of the contraption for hanging and said that we were hanging more than a hundred murderers every year. Hearing this the lady suddenly ceased to take any part in the conversation and went into a depressive mood. Next morning her husband came to me and asked what I had said to his wife because she has been in a mood of depression since she left the dinner table. I asked him to come in the evening with his wife for dinner. I explained to her that we did not hang every man convicted of murder. As for instance, I said, where a man has committed murder in the course of a sudden quarrel, or where the murderer is an aggrieved person because of the provocative conduct of the murdered man or where the murderer is a youth, we don't hang him.

I told her that when a sentence came before me for confirmation, I felt while considering its confirmation as if I was putting the hangman's noose round my own neck and it was only after considering the nature of the offence and the effect of the crime on the

murdered man's feelings and the members of his family that I signed the death warrant. But, I asked her, what penalty short of death she will award to a man who has committed rape on an infant in such a barbarous manner as to kill her or where a man in order to accelerate his own succession to property murders the rightful owner for the time being? The lady pulled herself up, her depressive mood disappeared and she enjoyed her dinner. I have often recalled this incident and wondered what interest she had in how criminals were treated in Pakistan. With experience I now have an answer. Her feelings for humanity transcended all local limits.

During the Martial Law regime there have been public hangings and whipping. The events to take place were advertised in the newspapers and lacs of people gathered round the gruesome scene. The object was that those who witnessed these punishments would learn a lesson and will be deterred from committing such crimes. But these scenes produced no visible effect on society and commission of crimes went on as before. There was also two cases of theft in which the hands of two thieves were to be cut off in accordance with Islamic Law but these sentences do not appear to have been carried out. People come to see these hangings and whipping just as they go to a picture house to see the story of a crime on the screen. In fact these punishments have an entirely different effect; they demoralise the society inasmuch as they make men indifferent to pain and cruelty.

In modern jurisprudence, punishment has four different aspects; (1) preventive (2) reformative, (3) retributive, (4) deterrant. The primary object at present is the reform of the criminal by sending him to a penitentiary, the period of detention in that institution being interspersed by parol. A glimpse of all these aspects is to be found in Islamic Law also. The principle of tauba (repentance) is recognised by the Quran itself, provided the criminal reforms himself. Deterrance is secured by lapidation (stoning the criminal to death) or Qata Yad (cutting off of the hand of the criminal). Retribution or retaliation takes the form of Qisas or diyat, namely, payment of compensation to the injured party and in case of murder to the heirs of the deceased person or by the application of more than three

thousand years old rule enunciated by Moses "eye for eye, tooth for tooth, burning for burning, wound for wound" (This rule was not adopted in its entirety by the Holy Prophet who added qisas and blood money to the rule).

Some of these punishments have been subjected to criticism by the modern world on the ground of cruelty e.g. cutting off of hands and feet, whipping and stoning to death. In Saudi Arabia, adulterers are still stoned to death, while hands of thieves are still cut off.

With these preliminary remarks, let us examine the general question of punishment in Islam, from the orthodox and the modern point of view.

Let us begin with Hughs' dictionary of Islam and the authorities on which it is based. According to the compiler of that dictionary, punishment is divided into three classes: (1) Hadd (2) Qisas and (3) Tazib. Hadd is defined as the punishment the limits of which have been defined in the Quran and Hadis. The following belong to this class (1) adultery (zina) where the adulterer must be stoned to death—Mishkat; (2) fornication, for which the guilty person must receive 100 stripes—Quran, Ch. 24, Verse 2 ; (3) the false accusation of a married person of adultery, namely qazf for which the offender must receive 80 stripes—Quran, Ch. 24, Verse 4; (4) Apostacy which is punishable with death, (Mishkat, Book XIV, Ch. V) (5) Drinking wine (Shurb) for which the offender must receive 80 lashes (Mishkat, Book XV, Ch. IV); (6) Theft (Saraqa), which is punishable by cutting off of the right hand, (Quran, Surah V. 38 (7) ; Highway robbery, for robbery only the loss of hands and feet, and for robbery with murder, death, either by the sword or crucifixion, Quran, Surah V. 33 (8) ; Qisas (Retaliation) putting to death the murderer or a member of the murderer's family; it can be remitted by the heirs of the murdered man and is applicable to cases of murder and of wounding (9). Tazib is the punishment which is left to the discretion of the Qazi or Judge.

The forms of punishment that are open to a Qazi are (1) admonition (2) jarr, dragging the offender publicly to his house (3) chastisement by inflicting blows of lashes on the offender (4) impri-

sonment (5) fine. In the determination of the form or quantum of punishment in tazib, analogy (qiyas) deduction and istadlal (reason) have played a great part and on this jurists have widely differed.

The question of tazib or tazir may be dealt with first. As the form and quantum of punishment under tazir was in the discretion of the Qazi and he had to take into consideration not only the nature of the offence but also the status of the offender, it is impossible, if Islamic law is to be enforced in the present state of society, to lay down any general rules, the jurists and Qazis themselves having different opinions on the punishment of crimes falling under tazir.

The authorities cited in support of the hadd punishments by Hughs purport to be based on Mishkat and the interpretation of the Quran by the four founders of the Sunni Sect. There were many other persons called Imams who followed and in places explained the opinions of the four founders, the last of them being Ghazali who after changing his views several times ultimately became an Asharite and thereafter a sufi. His book 'Ahya-ul Ulum' is considered in authority next to the Quran and he himself is considered as Hujjatul Islam, the final word on Islam. With him closes the period of orthodox Islam, which after him assumed a static form which still continues to be the Islam of the orthodox.

Mishkat to which Hughs refers is a book of great authority among the sunni Muslims having been written by Imam Hussain-ul-Baghawi before 510 A. H. (1142 A.D.). This book also represents the orthodox view.

As I have mentioned above, the UNO Charter of Human Rights expects each member state to embody in its legal system a law prohibiting all cruel and inhuman punishment. All physical punishments are in a sense cruel and inhuman and detract from the dignity of man. It is for this reason that corporal punishment like caning and whipping have been abolished in civilized countries in educational institutions. In this connection I may mention the case of my own grandson who is now employed in London. This youngman when a child of 8 or 9 years of age was a student in the Sacred Heart High School, Lahore. His section was in-charge of a black ugly Christian mistress who used to punish him for not doing home work.

One day when I was going to the High Court, I found this child running on the Mall in the direction of the home. I stopped the car and took him in. He showed me the palm of his right hand which was red with marks of cane strokes and said "If she can beat me, I can also beat her". Thereafter he would not go to school and would cling to his mother's or my legs inextricably. I went to his Principal and told him the whole story. He said that he understood the child's mind and that he will never go to any school and I will have to teach him at home. But after a while he said that he would try an alternative and that might work. He called a young beautiful mistress and told her a part of the story and informed her that he was transferring the child to her section and that she should treat him kindly and pay special attention to him. The child followed his new mistress and returned home after the usual school hours. After this he would be ready for the school earlier than usual and happily go to the school. He stood first in his class in the examination and always passed every examination with distinction. In England he passed the Chartered Accountancy Examination in the minimum time, beating those who had gone to England for this course one or two years earlier.

As regards corporal punishment in the Islamic system one of the offences for which limbs may be amputated is really an offence of waging war against the State which is punishable with death, and mutilation is not only an alternative but qualified by sincere repentance. The same can be said of cutting the hands of the thief. It is the maximum punishment meant for habitual offenders and is subject to the principle of tauba (sincere repentance and reform).

FIRST INSTALMENT OF NIZAM-I-MUSTAFA

At the stage it will be proper to deal with the Order or Ordinances prescribing the hadud for certain offences. The President has promulgated on 12th Rabiul Awal one Order and 5 Ordinances of Islamisation of laws. These relate to offences for which hadud have been prescribed by the Quran and Sunnah and are the following:—

(1) The Prohibition (Enforcement of hadd) Order, 1979.

(2) The offence of Zina (Enforcement of Hadud) Ordinance 1979.

(3) The offences against Property (Enforcement of Hadud) Ordinance 1979.

(4) The Offence of Qazaf (Enforcement of Hadud) Ordinance, 1979.

(5) The Execution of Punishment of Whipping, Ordinance, 1979.

(6) The Code of Criminal Procedure Amendment Ordinance 1979.

The first thing to say about this legislation is that it does not include all the offences for which hadd is prescribed by the Quran and Sunnah. For instance, it does not include apostacy for which the punishment is death. Mr. Justice Hamoodur Rehman, till recently Chairman of Advisory Council of Islamic Ideology, says that adultery, theft and apostacy and drinking of wine are offences for which hadud have been fixed ('Nawai-Waqt', December 16, 1978). Mr. Waliulla, Principal Law College, Peshawar University, excludes drinking and apostacy from and includes Qatli-amad in the list. Mr. M. B. Ahmad Secretary, Constituent Assembly in his "Administration of Justice in Medieval India" also includes Apostacy in the offences for which hadd is prescribed and excludes dacoity and murder from the list.

It is well that General Muhammad Ziaul Haq has excluded apostacy from the list of Ordinances but it is not understood why Qatl-i-amad is not included, for that offence there is hadd, though in the alternative. There is no system of law in which murder, a grave offence against society, is not punishable.

THE PROHIBITION (ENFORCEMENT OF HADD) ORDER 1979

In discussing this Order regard must be had to what was Sakar and Khamar in the Prophet's time and the Islamic Republic. Sakar was obtained from dates and Khamar from grapes by a special process. The dates and grapes were put in a container with water and boiled. When 2/3 of the water had been evaporated, what was left was mosallis (one third) drinking of which is lawful. Sakar and Khamar are the only two kinds of intoxicating stuff which have been referred to in the Quran where two verses are in favour of its use

and two against it. Absolute prohibition is not deducible from the Quran, because they are not included in the things which are declared haram (forbidden).

The question of the lawfulness or otherwise of intoxicating drinks is not so simple as it is considered to be. The relevant verses are as follows:—

He hath forbidden you only the dead animal and blood and swine flesh and that which hath been immolated in (the name of) any other than Allah (Ch. 2 : 173; Ch. 5 : 3 Almaidah).

Ch. 16 : 67—And of the fruits of the palm and the grapes you obtain from them intoxicants and good nourishment. There is surely a sign in this for people who understand.

Ch. 4 : 43—O you who believe go not near prayers when you are intoxicated till you know what you say (in prayers).

Ch. 2 : 219—They ask thee about intoxicants and games of chance. Say in both of these there is great sin and some advantage for men and the sin is greater than their advantage.

Ch. 5 : 90—You who believe, intoxicants and games of chance and (sacrificing to) stones set up and divining by arrows are only an uncleanliness, the devil's work; so shun it that you may succeed.

Ch. 5 : 91—The devil desires only to create enmity and hatred among you by means of intoxicants and games of chance, and to keep you back from the remembrance of Allah and from prayer. Will you then keep back?

According to Mishkat the punishment for drinking is 80 lashes. There has been a good deal of discussion on the subject of drinking intoxicants, the Hidaya devoting several pages to this discussion in pointing out differences of opinion between the jurists including Abu Hanifa who in some respects held an opinion different from others. The first thing to notice is that intoxicants are not included in the list of things which are absolutely prohibited by the 3rd verse of Chapter V which declares haram (forbidden) corpses, blood, flesh of swine and of animals sacrificed otherwise than in the name of Allah. The only two fruits mentioned in the Quran from which intoxicants are

derived being the date from which Sakar is obtained and the grape from which Khamar is produced, the view of Imam Abu Hanifa who is called Imam-i-Azam and who according to Allama Iqbal had a "keen insight into the universal character of Islam", is that intoxicants made from other substances, e.g., wheat, barley, millet etc. by a process of distillation so as to become spirituous liquors are lawful and can be drunk in moderate quantities or as medicine but not so as to produce a state of khamar which word is derived from the same root as Mukhammirat and according to all lexicographers means a state of stupefaction or loss of senses. And this is precisely the result when all the relevant verses are read together. In Nurulanwar, a standard book on Hanafi Jurisprudence, Abu Hanifa's opinion is stated as follows: "Khamar is the name of an intoxicant made from grapes and by a particular process. Therefore all other intoxicants made from figs, dates, wheat and barley are not khamar and the Quranic Ordinances relating to Khamar cannot apply to them". Taking into consideration the illatul-shara, that is, the motive of the law or the ratio legis, we find that the use of Khamar is prohibited because it intoxicates. It follows that the use of any other intoxicant would be a sin and a punishable offence if it is taken in a quantity which causes intoxication i.e. stupefaction or loss of senses. (Waliullah, "The Quranic Law of Crimes," p. 767). As regards the degree of intoxication required for punishment Imam Abu Hanifa's opinion is that the person drunk, to be punishable, should not be able to understand what is said to him in any shape, not able to distinguish between a man and a woman or between different objects while his two disciples hold that he should not be able to speak distinctly "without confusion" and many doctors agree with that opinion. According to Shafa'i while attempting to walk, he should stagger or turn giddy. (Hamilton's 'Hidaya' Grady's Edition p. 194).

The subject also brings in for discussion the subject of Nasikh and Nansukh which cannot be accepted without detracting from one of the Attributes of Allah. The Shorter Encyclopaedia of Islam published by Leiden University, a university which specialises in Islamic studies, also states that drinking of spirits is considered unlawful except by the Hanafis. Imam Abu Hanifa is of the view

that drinking of spirits is neither unlawful nor punishable provided you take them in moderate quantities or as a medicine.

Speaking of a Sufi. Shaukat Ali, Professor of Political Science in South-Eastern Massachusetts University, in his book "Intellectual Foundations of Muslim Civilization" says at p. 63 of the book "Love and wine give him (the sufi) solace and opens the way to ecstasy. (See the interesting article by Shakir Rizwi in 'Pakistan Times' of July 12, 1979).

THE OFFENCE OF ZINA "ENFORCEMENT OF HADUD ORDINANCE 1979".

There is no verse in the Quran prescribing punishment of adulterer or adulteress of being stoned to death.

In the Quran the punishment for Zina is hundred stripes (Ch. 24, verse 3). Stoning to death an adulterer is therefore contrary to Quran, since the Prophet himself has stated that "my words may be abrogated by God's words but I cannot abrogate God's words". Probably this punishment of stoning to death is based on Maaz's precedent but it is not clear whether this punishment was before or after the revelation of Surat-ul-Nur, as obviously the Prophet could not go against God's word. The Ordinance draws distinction between a Mohsin and a not Mohsin, reserving a sentence of hundred stripes for a person who is not a Mohsin and that of stoning to death for a person who is a Mohsin but it is submitted that the Quran draws no such distinction, the word used for the offence is Zina is used for adultery by a married man as well as by an unmarried man. In commenting on this subject Maulana Muhammad Ali says that the punishment for adultery is 100 stripes not stoning to death which is contrary to the Quranic injunction. (Note 1736 at p. 679), See also the interesting article by Shakir Rizwi in the 'Pakistan Times' of July 12, 1979).

THE OFFENCE AGAINST PROPERTY "ENFORCEMENT OF HADUD ORDINANCE 1979".

The Ordinance which is based on Suratul Almaidah, verses 33 & 34, treats these verses as prescribing punishment for Highway

robbery or dacoity, accompanied with or without murder. Punishment is provided as follows:—

(1) When no murder has been committed nor any property has been taken away whipping not exceeding 30 and 3 years rigorous imprisonment.

(2) Where no property is taken away but hurt is caused as for hurt under the existing law.

(3) Where property of a certain value has been taken away but no murder has been committed, cutting of the right hand from wrist and left foot from the ankle.

The verses are as follows:—

"The only punishment of those who wage war against Allah and his Prophet and strive to make mischief in the land is that they should be crucified or their hands and their feet should be cut off on opposite sides or they should be expelled from the land. Such will be their degradation in the world and in the hereafter there will be an awful doom. Verse 34—Save those who repent before you conquer them. For know that Allah is Forgiving and Merciful."

It will be noticed that the offence is against the state and the society and not against property. The verses cover offence such as rebellion and waging war and creating disorder in the land. Neither murder nor highway robbery are mentioned in the verses. On the contrary the words "save those who repent before you conquer them" show that the offender belongs to a not believing tribe at war. If these verses are read in their plain meaning they punish rebellion or waging war and such acts as may properly by included in the word "fisad" (disorder) but our jurists have classified the offence under different categories, providing punishment separately for each category. The benefit of repentance is given only to those who commit simple haraba, a word defined in the Ordinance and derived from the same root as the word Yuharibun. That is why the Ordinance describes these offences as haraba.

These two verses contemplate a fight between Muslims, and as the words "who wage war against Allah and his messengers" show, infidels. Verse 34 clearly shows that if these persons repent before

they are overpowered, that is to say cease fighting against Allah and His Messenger, in other words accept Islam, they are not to be punished as Allah is Forgiving and Merciful. (Maulana Muhammad Ali's Commentary, note 692 at pages 251-252) As for those who continue the fight and are overpowered by the Muslims, any one of the three punishments may be inflicted on them. How can these verses be considered as offences against property as the Ordinance treats them.

SARAQA

The Quranic verses are in Suratul Almaidah as follows:—

38—"As for the theft male or female cut off their hands as punishment for what they have done. It is an exemplary punishment from Allah and Allah is Mighty and Wise."

39—"But whoever repent after his wrong doing and reforms, Allah will accept his repentance. Surely Allah is Forgiving and Merciful."

It is quite clear from these 2 verses that verse 39 is a Proviso to the preceding verse 38. Therefore the hands of the thief cannot be cut off unless he is given a chance to repent. A glimpse of the Proviso is found in Section 95 "where the Ordinance provides that if a person commits the offence for the third time he would be imprisoned for life. But if he is sincerely penitent the High Court may release him on such terms and conditions as it may deem fit." For the first offence he loses his right hand; for the second offence he loses his left foot upto the ankle. A person in that position with his right hand and left foot cut off to the ankle, will present a funny appearance and will hardly be able to commit theft for the third time, and if he is entitled on the third offence to get his freedom, can he not be put in a penitentiary on the commission of first offence if he is given time to repent and reform himself. (This is not my personal opinion but also the view of late Mr. Justice Muhammad Sharif, once member of the Islamic Commission, who cites several instances where this penalty was not imposed. Maulana Muhammad Ali at p. 252, note 693, of his edition of the Quran interprets the two verses in the same manner and so does Razi in 'Tafsir-e-Kabir'. The

same view is taken of this question by Mir Waliullah in his 'Quranic Law of Crimes' and Mr. Muhammad Iqbal Ghazi, an Advocate, in a pamphlet entitled "Cutting off of Hands and Islamic Ideology". The view expressed by Mr. Justice Muhammad Sharif as well as Maulana Muhammad Ali is that the penalty of cutting off of hands is the maximum penalty and can only be inflicted on a habitual offender. (See also the interesting article by Shakir Rizwi in 'Pakistan Times' of July 12, 1979).

THE OFENCE OF QAZAF "ENFORCEMENT OF HUDUD ORDINANCE, 1979".

Concerning false accusation of adultery against a chaste woman, the law is very strict. It requires 4 witnesses to prove the allegations and if this number of witness are not forthcoming the complainant must not only receive 80 stripes but also lose the right of giving evidence in any future case (Chapter 24, verses 4).

Allama Yusaf Ali, on this law says that the "most serious notice is taken of people who put forward slanders or a scandalous suggestion about women without adequate evidence. If anything is stated against women's chastity it should be supported by evidence twice as strong as would ordinarily be required for business transactions or even in murder cases, that is, 4 witnesses would be required instead of 2. Failing such preponderant evidence the slanderer should himself be treated as a wicked transgressor and punished with 80 stripes. Not only he would be subjected to this disgraceful form of punishment but he would be deprived of the right of giving evidence in all matters in his life unless he repents and reforms in which case he can be readmitted to be a competent witness."

I think I had better quote Shah Wa'iullah who brings out the reasons for punishment in Islam.

He says :

"The Prophet who aims at all embracing principles for different peoples does not leave them to work out their own rules of conduct. His method is to train one particular people, and to use them as a nucleus for the building up of a universal Shariat. In

doing so he accentuates the principles underlying the social life of all mankind, and applies them to concrete cases in the light of the specific habits of the people immediately before him. The Shariat values (Ahkam) resulting from this application (e.g. rules relating to penalties for crimes) are in a sense specific to that people; and since their observance is not an end in itself, they cannot be strictly enforced in the case of future generations" (Iqbal, 'Reconstruction of Religious Thought,' p. 172).

Chapter XIII

FREEDOM OF RELIGION

Apostasy, according to majority of Ulama is punishable with death. It is well that apostasy has not been included as an offence for which had is fixed in the recent Ordinances, that have been promulgated. A basic right in modern constitutions is religious freedom which includes the right to profess, practise and propagate religion. Worship according to one's religion is a part of the freedom of religion, and this right is basic and is conceded in all secular modern constitutions. It is however not an absolute and unqualified right; it is always made subject to law for reasons presently to be stated.

Religion does not necessarily mean a theistic religion. In India it has been ruled that Buddhs and Jains who do not believe in God are as much entitled to the enjoyment of this right as those who believe in God.

This right is included in the 1973 Constitution (in abeyance) among the fundamental rights and its exercise is made subject to law. When a fundamental right is made subject to law, it has never been held that it may be entirely taken away by the law; the law can only regulate its exercise. While religion may be professed, practised and taught, even propagated in private, its practice, profession and propagation in public may lead to communal riots and may thus raise questions of law and order in a multi-religious society. Law has therefore to take note of such possibilities and make provision to prevent such breaches of peace or their apprehension. Further,

if performance of certain religious rites offends against the generally accepted rules of morality, such as appearing naked in public and there is a law to prevent or punish such indecent exposure, such law will not be held to be unconstitutional on the ground of its violating a fundamental right. Thus in America polygamy and bigamy are criminal offences, and if a Muslim is guilty of any such offence, his plea that such practice is allowed by his religion will not be a good defence.

I have raised the question of religious freedom as Pakistan is being taken or is being given the direction of becoming a religious State. Some weeks back I read in the newspaper reports (Viewpoint) that a member of Chief Martial Law Administrator's Council intends to bar the propagation of all non-Islamic religions. Any such step will not only be deprecated by democratic societies but will have another serious implication concerning Islam itself. If a man preaches in public the sublime teachings of Jesus of Nazareth without, expressly or impliedly, attacking Islam, is Islam so tenuous a thread that mere words of praise for other religions or their founders can break it? The position will, however, be otherwise if offensive words are used against Islam, so as to inflame the susceptibilities of the followers of that religion and to incite them to violence. If therefore it is intended to restrict the public preaching of other religions, the principle stated above must be borne in mind. Absolute prohibition will be violative of a generally recognised right and will throw back Islam by more than a thousand years. The Moghals in India and the Moors in Spain governed large portion of India and Spain respectively for 700 years, but never imposed a restriction on other religions. The same was the case with Caliph Mamun, the Abbasia Caliph.'

I have stated elsewhere that Islam is the most tolerant religion and allows perfect freedom of thought. One has merely to read two famous verses of the Quran, the Surat-ul-Kafirun and the La Ikraha verse to come to this conclusion.

But while the President was greeting the Christians on Christmas day, one Subhi-Sadiq was proclaiming that all other nationalities will be eliminated from Pakistan ('Pakistan Times' of 27th December, 1978).

Chapter XIV

POLITICAL PARTIES AND THEIR ISLAM

I have met General Muhammad Ziaul Haq twice, once at Rawalpindi at his request and again at Lahore, also on his direction, but in a personal matter. I cannot describe the details of what transpired in the interview. In August 1978, he associated with himself four out of nine parties of the Pakistan National Alliance to help him in enforcing Nizam-i-Mustafa. These were the Muslim League, the Jamaat-i-Islami, the Jamiat-ul-Ulama-i-Islam, and Pakistan Democratic Party. On what principle they were selected was not explained. Nor was it explained by these jamaats themselves why they joined the Martial Law Government except that they had so joined because they shared General Muhammad Ziaul Haq's objective to enforce Islam and to restore democracy in the country. Religion and politics cannot be separated and these parties so far as democracy is concerned, separated it from religion because if democracy was included in Nizam-i-Mustafa, that Nizam alone would have covered it. The Pakistan National Alliance came into existence because of the hatred of Bhutto and hatred can never be the foundation of Islam.

And look at the past of these parties. The Muslim League having been thoroughly defeated in the election of 1954 never regained its former position. It was dead long before Ayub's Constitution. Its executive committee had not been elected for years and there was no means of calling a general meeting. Ayub therefore

called a Convention of the League but the invitees to the Convention were carefully selected. Only persons expected to support Ayub were called. A new constitution for the League, prepared by me, was passed in hullabaloo without its being read.

The second party was Jamaat-i-Islami who had described Pakistan as 'Na-Pakistan' and the Government established by the Quaid-i-Azam as Kafirana Government. Its founder has repeated this statement about the Satanic nature of such Government on 19th January, 1979. He is the author of "Qadiani Masala" but could not define a Muslim as excluding the Ahmadis from Islam because he forgot to state that our Prophet was Nabi-i-Akhuruzaman, or Khatimul-Mursalin or Akhar-ul-Nabyeen, the last of the Prophets. Realising this mistake on the day following the day he was examined in the inquiry into the Punjab Disturbances, an application was made by Mr. Said Malik, the representative of the Jamaat, that the question "who is a Muslim" was asked without notice. The application having been rejected on the ground that a person who calls another Kafir, is supposed to know who is a Muslim, the deficiency was made good by Amin Ahsan Islahi who gave a long definition of a Political Muslim and Haqiqi Muslim. Nevertheless he filled up the gap by saying that our Prophet was the last of the Prcphets, a gap which had been left by Maulana Abul Ala Maududi. Mian Tufail Muhammad who is now Amir-i-Jamaat went to the extent of saying that those who supported the Quaid-i-Azam's Government or joined it were sinners, adding that even if a post was offered to a Muslim by the Indian Government it was his duty to refuse to accept it. In his recent interview on the television he has said that there was an understanding between the Jamaat and Quaid-e-Azam to work separately. Can anyone, with a grain of commonsense in him, accept his statement that there could be an agreement between the Jamaat and the Quaid-i-Azam whom the Jamaat was constantly abusing by calling his conception of Pakistan Na-Pakistan and of establishing a Kafirana Government in the country. If Mian Tufail Muhammad's statement had been correct, then why did not the Quaid-i-Azam take into his cabinet a member of the Jamaat instead of taking a Hindu (Mandal).

The third party whom General Muhammad Ziaul Haq had patronised is Jamiatul Ulama-i-Islam, Mufti Mahmood's group. The Mufti originally belonged to Jamiatul Ulama-i-Hind who were supporting the Congress over the Pakistan issue. And it is alleged by Shah Ahmad Nurani that in a meeting of the U. D. F. in 1974 Mufti Mahmood had declared in the presence of Maulana Abdul Sattar Khan Niazi, Pir Pigara and Malik Muhammad Qasim that he was not associated with the sin of creating Pakistan ('Nawai Waqt', of 13th September, 1978). In his book "Quaid-i-Azam as I knew him" Mr. M. A. H. Isphani has disclosed that Maulana Kifatullah and Husain Ahmad had offered that the Deoband propaganda machinery could be placed at the disposal of Muslim League if a sum of Rs. 5,000 were placed at their disposal but the offer was rejected because the League had not a piece in its coffers. The members of the Deoband at that time were Shabbir Ahmad Usmani, who later became the Shaikhul Islam, Pakistan, Mufti Muhammad Shafi, Maulana Zafar Ahmad Usmani and Maulana Husain Ahmad Madni. On the refusal of the League, Husain Ahmad Madni supervised the campaign against Pakistan ('Pakistan Times' of December 25, 1978). This Hussain Ahmad Madni is the same person about whom Allama Iqbal says :—

عجم هنوز نداند رموز دیں ورنہ
ز دیو بندحسین احمد ایں چہ بوالعجبی است
سرود بر سر منبر کہ ملت از وطن است
چہ بے خبر ز مقام محمد عربی است
بہ مصطفیٰ بہ رساں کہ دین همہ او است
اگر با او نہ رسیدی تمام بولہبی است

Mufti Mahmood, the President of PNA was educated at Deoband; perhaps he is the pupil of Hussain Ahmad Madni.

The fourth party was PDP, Nawabzada Nasrullah Khan's Party. The Nawabzada is the President of PDP, but in 1953 he was the Secretary General of Majlis-i-Ahrar who were responsible for the disturbances in the Punjab in that year. One of their prominent

leaders, Maulana Mazhar Ali Azhar, had called the Quaid-i-Azam, Kafir-i-Azam and admittedly he coined the couplet :

اک کافرہ کے لئے اسلام کو چھوڑا
یہ قائداعظم ہے کہ کافر اعظم

The Ahrar were first with the Congress, then became nationalists and when they came to Pakistan became a religious party with a political motive.

The fifth party, though no member had been taken from them, but who were supporting the Government were Khaksars, one of whose members made an attempt on Quaid-i-Azam's life. Let. General Muhammad Ziaul Haq ask these parties the question whether before they were taken in the Cabinet they ever said Fatiha on the mazar of the Quaid-i-Azam or joined any celebrations which are held in his honour twice a year. The same question may be asked of them about Allama Iqbal. They take pride in their superiority complex and I am sure the true answer will be in the negative;

مگر ہے ہماری نظر اتنی اونچی
کہ یکساں ہے سب واں بلندی و پستی
جدھر کھول کر آنکھ ہم دیکھتے ہیں
زمانے کو اپنے سے کم دیکھتے ہیں

But the irony of fate is that parties who abused the Quaid-i-Azam and the Muslim League were taken in Government to govern the country which was first conceived by Allama Iqbal and brought into existence by the sole efforts of Quaid-i-Azam. Now they have quitted the Government on the ground that both their objectives have been fulfilled. The question is by what standard they governed the country while in office. Islam, if so which Islam? "For Muslim self comprehension", says Mr. Detliv H. Khalid, in his "Islamic Studies", this question 'what actually is Islam', surges with urgency. For the western observers there appears a phenomena of somewhat enigmatic nature in the fact that so many divergent groups insist on being faithful adherents of the creed, progressive reformers no less than the

conservative theologians of the toiling masses; seemingly irreconcilable opponents lay claim to the same religious basis. This naturally resulted in a variety of divergent answers. The possibilities discovered in the course of the quest for a definition of true "Islam" merely highlighted the already existing confusion and further created the crisis of identity. For the stakes here are nothing less than the meaning of Islam itself. Both modernists and traditionalists wish to reconsider secular life in Islam. The question is "which Islam" ('Islamic Studies', pp. 239, 240). The Islam of the Shias, of Jamaat-i-Islami, of Jamiatul Ulama-i-Islam, of Brelvis or of Deobandis.

In the Shia Political Conference when a Shia A'alim, Maulana Abdul Hamid Chandio, said that democracy was not known in Islam, several political leaders staged a walk out ('Musaawat' for December 15, 1978). A Shia Mujtahid, on being interviewed on television was asked what was Nizam-i-Mustafa, gave a long reply which was blacked out. The Shias cannot be ignored in enforcing Nizam-i-Mustafa as they are educated and powerful section of the community, having different views on Ushr and Zakat and penal laws. They number about 3 crores. Mufti Jafar, their mujtahid, wrote a minute of dissent when the Ushr and Zakat were being discussed but he was over-ruled. He has now threatened to resign from the Advisory Council of Islamic Ideology. Allama Mufti Syed Nasiruddin Ijtehadi, Allama Shabbir Ansari, Allama Syed Najamal Hasan have said that though they welcome Nizam-i-Mustafa, their idea of Nizam-i-Mustafa is different from that of Sunnis.

The question asked by Mr. Khalid is precisely the same as I asked of the various Ulama in 1953, when I was holding the inquiry into the Punjab Disturbances, "Who is a Muslim". Mr. Khalid himself answers the question as follows :—

"The quest resulted in the ancient controversy between the concept of Islam as primarily a spiritual inwardness (Batin) and the other, visualising it, first and foremost, as a social force with emphasis on its externalities (Zahir). The attitude towards embodiment of the Zahir or external aspect, viz, the legal system called Shari'a, had always been revered as a hallowed norma. But in those ages devia-

tion from the sacred standard would be deplored, if in no other way than by sulky acquiescence, if not genuine so at least pretended, in the forces that be. The faithfull were sustained by the pious expectation of the day when the shari'a would be enforced. Westernisation has turned the tables. With the liberal majority of the modern educated class, though not explicitly stated, deviations became the aspiration, and the reminder of effective shari'a injunctions are only acquiesced in with the hope for their obsolescence. In view of the increasing adoption of outer aspects from the dominant civilization, with the concurrent fear of losing part of one's self, the temptation is strong to substitute by making as much as possible of the inner spirit", p. 240.

There are 73 sects in Islam, according to Shaikh Abdul Qadir Jilani more than 150. As there are no official priests in Islam, people have different views about Islam. Most of them are followers, of Imam Abu Hanifa and the three other Imams, Malik, Shafai, Ibni Hanbal. But there are differences among these followers, particularly in the Indo Pakistan Subcontinent. The Barelvis do not see eye to eye with Deobandis. Shias are heretics according to the Sunnis, and Shias in turn call the Sunnis as Kafirs. General Ziaul Haq should seek a common denominator from these jamaats (according to Mufti Mahmud agreement on 20 points is necessary) and that common denominator can only be the recital of Kalma-i-tayyaba, as pointed out by Muhammad, one of the two representatives of Khomeini, *Lailahaillallah Muhammad ur Rasulallah*, of being a Muslim as laid down by the Privy Council and the eminent Muslim Judges like Mr. Justice Mahmood, Sir Abdurashid and English Judges before the partition. Otherwise you enter a field of controversy. The Quaid-i-Azam wanted a modern secular democratic State based no doubt on Islamic principles. He was not against Hindus and Sikhs, as they were to be equal citizens of Pakistan. Yahya Khan was the first person officially to say that Pakistan was won in the name of Islam. There is a difference between Pakistan having been won in the name of Islam and the demand for separation of Muslim majority areas. If the non-Muslims had not left or been driven out of India, there would have

been Quaid-i-Azam's Pakistan with a secular constitution and not the Pakistan as it became in the hands of Jamaat-i-Islami and the associate parties. And as regards Muslim exploitation by the Hindus since the Government would have been mainly in Muslim hands, it must have done something to prevent exploitation of Muslims and dedicated itself to the betterment of the toiling masses, as stated by the Quaid-i-Azam in his speech of 11th August, 1947.

THE SHARIAT BENCHES ORDER

The First Shariat Benches Order, P. O. 22 of 1978, was announced on 1st Muharram. It promised that a shariat bench will be set up at each High Court and a Shariat Appellate Bench in the Supreme Court. Their functions would be to declare a law invalid if it was repugnant to the Quran and Sunnah. The measure was hailed by Maulana Maududi and others as a landmark in the history of the country. While addressing the students of the Law College, Mr. Brohi admitted that Martial Law was temporary and was intended to fill up a gap in the administration and the Shariat Benches Order will lapse after the elections were held and a new Government was installed in office, unless preserved by the new Government. The statement related to a legal position but Mian Tufail Mohammad, Amir, Jamaat-i-Islami, took a strong exception to it and suggested that the provisions relating to the Shariat Benches must be incorporated in the Constitution.

Accepting Mian Tufail Mohammad's suggestion, General Mohammad Zia-ul-Haq amended the Constitution by adding the Shariat Benches Order as Chapter 3A to Part VII of the Constitution.

There are certain points about the Order which require notice. The first point is that the Constitution, the Muslim Personal Law, any law relating to the procedure of a Court or Tribunal or until the expiration of three years from the commencement of the Order, any fiscal law or law relating to the levy or collection of taxes and fees or banking or insurance practice and procedure have been excluded from the jurisdiction of Benches. So many and such important law having been excluded from the jurisdiction of the Benches, one may well ask what remains for the Benches to say that a law is repugnant to the injunctions of Islam.

The second point is that the Benches cannot touch the Constitution. With the Constitution not being Islamised, it is impossible to have an Islamic State as the Constitution is the fountain from which all laws flow and derive their validity. Is the Constitution being taken as Islamic? If not, it is difficult to see how the system of laws can be Islamised.

During the inquiry into the Punjab Disturbances I had realised this position and while giving a picture of an Islamic State, had observed that unless the Constitution is made by ijmai-ummat any provision in the Constitution which is repugnant to Quran and Sunnah shall to the extent of the repugnancy be void.

The third point is why Muslim Family Law has been excluded from the jurisdiction of the Benches, when it is daily applied to family relationship?

The next point is that suits or other litigation started before or after the Shariat Benches Order will proceed in the normal way and under the existing law. This further reduces the jurisdiction of the Shariat Benches. The Bench has to fix a date on which its decision will take effect. Thus it will be a decision in a particular case. It will not be the law for all cases. The decision of the Bench will be sent to the President or the Governor who shall incorporate it in the legal system, when the decision will be a part of the law.

In the statement by which Shariat Benches were constituted, General Mohammad Ziaul Haq had declared that no interest will be charged on the house building allowance, advanced by Government or Government sponsored institutions, to Government servants up to grade 15. He has thus admitted the unlawfulness of interest. The question is why interest is not disallowed in all transactions because what is unlawful from the beginning is unlawful for all time and for all Muslims. An interest free economy will be the test for the introduction of Nizam-i-Mustafa.

And lastly is the question whether a Presidential Order amending the Constitution, when the Chief Martial Law Administrator is also the President, can continue after the Martial Law's authority comes to an end. Will Mr. Brohi's argument then cease to apply.

Chapter XV

QURAN AND SUNNAH

The Quran is a revealed book, a great book but it is not a book of history, chemistry, physics or astronomy; not even a book of law. With its all embracing ethical dimensions it is a superb Code of Life ever revealed or written. Together with sunnah, it has remained the foundation of Islamic thought. There can be no doubt of its authenticity. But the moment we enter Hadis, which is a record of the actions, sayings and approvals of the Holy Prophet, we enter into a field of controversy. That most of the Ahadis were invented or fabricated does not admit of any doubt. Abu Daud accepted only 4,800 out of 5,00,000 Ahadis and Bukhari relied only on 2,000 out of 40,000 narrators of Hadis. According to Tabqat-ul-Kubra Abdulla s/o Imam Ahmed bin Hanbal stated that his father had reduced into writing ten million traditions which he could repeat from memory. And this was despite the Holy Prophet's warning that his sunnah was not to be recorded unless "ye know for a surety". And several compilations were burnt during the Khilafat-i-Rashida. This was done lest the authority of the Quran be affected. "My word do not" the Prophet had said "abrogate the word of God but the word of God can abrogate my sayings" ('Mishkat', Book V. Col. XVI). The Holy Prophet himself burnt one collection, two others were burnt, one by Hazrat Abu Bakr and the other by Hazrat Usman ('The Quranic Law of Crimes' by Mir Waliullah, Pages 42 and 43).

A specimen of hadis in Tirmizi is given below:—

"Abu Kuraib said to us that Ibrahim ibn Yusuf ibn Ishaq said to us from his father, from Tutata ibn Musarif that he said, I have heard from the Abdurrahman ibn Ausaja that he said I have heard from Bark ibn Aziz that he said I have heard that the Prophet said "whoever shall give in charity a milch cow or silver or a leather bottle of water it shall be equal to the freeing of a slave."

There is difference of opinion as to who collected the traditions first. Some say it was Abdul Malik ibn Juraij of Mecca (died A.H. 150); others say it was Imam Malik (died A.H. 179). According to Ittrafun Nubala there are 140,066 collections of traditions but the most reliable collections are the Siha Sitta which were all compiled in the third century A.H.

It will be evident from the hadis cited by Tirmizi that there were many possibilities of error in compiling ahadis: e.g.

1. misunderstanding of the sense of the Prophet's saying;
2. mistake by one or more in a long series of narrators;
3. difference in two narrators, each understanding the hadis in his own way;
4. failure of memory on the part of the narrator;
5. inability of the narrator to understand the sense of hadis;
6. hearer of the hadis, while one person was explaining, taking the explanation as the hadis itself;
7. quotation of certain words of the Prophet by one narrator and the hearer taking it as supporting his own narration.

The compilers of ahadis, living some 230 years after the death of the Prophet were then confronted with a formidable task; they had to separate the grain from the chaff. They formulated certain rules for distinguishing the truth from falsehood, and had sometimes to travel long distances to inquire into the antecedents of one of a long list of narrators and acted with extreme caution in accepting a hadis. None of them held any public office. Their devotion to work and the self-sacrifice they made in completing their task was remarkable. It is for this reason that their works are held in such high esteem.

The sunnah had become the common law of Islam and the best criterion for judging the authenticity of a hadis is whether it was practised at the time when these compilations were made and this practice was unbroken to the life of the Prophet.

One of the books of Siha Sitta, the six correct books, was compiled by Bukhari (d. 256 A.H.). The other traditionists were Muslim (d. 261 A.H.), Abu Daud (d. 273 A.H.), Tirmizi (d. 279 A.H.), Nasa'i (d. 303 A.H.) and Ibn-i-Majah (d. 273 A.H.). Their collections are not based on any older work and are the result of what they heard from the Ravis. The four Imams, Abu Hanifa (80-150 A.H.), Malik (93-179 A.H.), Shafa'i (50-204 A.H.) and Ahmad bin Hanbal (164-241 A.H.), each of whom founded his own school of thought, had prepared their Musnads but these were prepared not by the mselves but by their disciples. The Musnad of Abu Hanifa was prepared by Qazi Abdul Muayyed Khawarizmi in 674 A.H.; the Musnad of Imam Ahmad bin Hanbal by his son and Abu Bakr Qatiee and the Musnad of Imam Shafa'i by Muhammad bin Yaqub-ul-Asam. The law is best explained when it is applied to the facts of a concrete case to produce an equitable decision but these Imams held no official position but were expounding law in the abstract; they were working in vacuum. Thus while these Imams were engaged in pronouncing law in the abstract, Muslim armies were engaged in conquering the world. Ibn-i-Rushd tried to separate religion from science and Imam Ghazali, Hujjut-ul-Islam, had said the last word on Islam. After Ibn-i-Rushd there is complete stagnation in scientific inquiry and after Ghazali in Muslim religious thought. For the last 800 years the Muslims, who were the inventors of science, have produced no scientific work worth mentioning and Muslim religious thought has remained stationary, all subsequent writers merely following one or the other of four Imams. Even Fatawa-i-Alamgiri which was prepared by a Commission appointed by Aurangzeb and which worked for 15 years, breaks no new ground. The Ijma of the Imams has closed the door of Ijtihad.

One of the Prophet's hadis which is generally accepted is "I am no more than a man but when I enjoin anything respecting religion receive it, and when I order anything about the affairs of the world,

then I am nothing more than a man" ('Mishkat' Book I, Chapter VI). This tradition takes away the authority of hadis relating to worldly affairs and introduces secularism in Islam.

The Shias judge Hadis from their own point of view and only consider such traditions reliable as are based on the authority of Ali and Ahli-bait. They have their own collections of Ahadis and do not accept the traditions compiled by Bukhari and his coworkers when they do not tally with their own traditions. They believe that the only Islamic form of Government was in the time of the Holy Prophet and therefore have different views on Ushr and Zakat and the cutting off of hands of the thief. They do not use the word Ushr but Khums, being 1/5 of the savings and the net agricultural produce. Further they believe that Government cannot collect Zakat or Ushr; their mujtahid only can do so and distribute the Zakat among the persons who are, according to the Shia views, entitled to it.

MODERNISTS & IJTIHAD

After the four Imams had completed their work and Ghazali, before becoming a sufi, had adopted Asharite doctrines, the door of Ijtihad was closed. None of the Imams said that after them there would be no more Ijtihad but during the time of Umayyads and Abbasids, when Ulama enjoyed an official position or had become professional jurists, the ruler when he wanted an opinion in favour of his own views, the Ulama, either under threat or from selfish motives, were found too willing to support their masters' view, till there came a time when they began to put superimposed or distorted versions of Islamic principles. The Scholars thought that if this process was continued, the real Islam would be lost in a bewildering maze of interpretations. The only way to stop this tendency was to declare that the era of independent reasoning was closed and Shari'a had been prepared for all time to come. Thus during the last 800 years or so Islam assumed and has remained in a static form. This period of stagnation continued till the 20th century when Shah Waliullah and Iqbal in India and Abdu in Egypt felt the necessity of breaking this lull. Among earlier independent thinkers had been Ibn-i-Taimiya, Sayuti, and Abdul Wahab. Those who

believed that the door of Ijtihad was closed are called muqallids and the majority of Ulama belong to that category. Though different schools sprang up in early Islam e.g., the school of Auzai, of Sufian Sauri, of Tabari and the Zahiri, they lasted for a short time and then disappeared. Confronted with a large number of traditions that were current in their time, the four Imams invented methods to produce the result which appeared to them to be justified. These methods are the (1) Qiyas which means the deduction of legal proposition from the Quran and Sunnah by reasoning by analogy. It seeks the motive of the law and the application of reasoning in one case to the facts of the other case (2) the rai, independent opinion, relying on the precedent when Muaz was sent to Yemen as Qazi and the Prophet asked him "how will you decide cases", Muaz replied "according to the book of Allah". "If that book contains nothing about the case," the Prophet asked, "then according to the Sunnah of the Messenger of Allah." If there is nothing in the Sunnah" asked the Prophet, "then according to my independent opinion" replied Muaz, and the Prophet approved Muaz's alternative. This hadis is reliable because both Abu Daud and Tirmizi mention it. (3) Istihsan and Istislah, to decide cases according to justice, equity, social conditions, and the requirement of every day life. (4) Advisability which is the guiding principle of Istihsan and Istislah.

Allama Iqbal has discussed at length the changes brought about in Turkey. He holds that declaration of Turkey as Republic in October 1923 was not opposed to Islam. The Grand National Assembly had declared the seat of Khilafat vacant when Muhammad VI left Istanbul for Malta, and the Assembly chose Abdul Hamid as his successor. In the Constitution of 1924 Islam had been declared by the Assembly as the State Religion. It was not till 1928 that this clause relating to Islam was removed, though the Khilafat had been abolished in March 1924. By 1939 Turkey had become completely secularised. The official language was declared to be Turkish and all Shari'a schools had been abolished. Women got their right of vote in 1934. Purdah was abolished and women became pilots and learnt to dance. Sunday became the day of rest and the Gregorian Calendar was substituted for the lunar calendar.

Roman script was introduced in 1928 and Ataturk went from village to village to teach students how to write in Roman. Kamal Ataturk was a nationalist and all people were declared citizens with equal rights before the law. His slogan "Turks for Turkey and Turkey for Turks" went deep into the hearts of people. He paid special attention to agriculture and the Ushr on the produce of the land was abolished. There were still people who believed in predestination. Ataturk taught them that man's destiny was in his own hands and that no supernatural force influenced his actions, The law was completely changed and Code Napoleon was gradually introduced. Ataturk was ruthless toward the corrupt officials. One Officer accepted a cigarette case as a bribe. He was promptly transferred to an ambassadorial post, recalled and dismissed. Allama Iqbal considers the abolition of Khilafat and the republican form of Government introduced by Ataturk the result of Turkish Ijtihad.

It is not a coincidence that the fall of Baghdad, Delhi and the Turkish defeat in the World War I produced in each country the so called reformers. The sack of Baghdad made the Caliph a renegade to Egypt. A thinker known as Sheikh Khalid Mahmood, in 1950 published his book "From Here we Start". As usual he was abused by the Ulama of Alazhar because he said therein that morality and spirituality in the absence of material prosperity, were meaningless. He preached secularism, birth control and emancipation of women. He was followed by Abduh who attacked Alazhar, a relic of the past. He attacked the methods of teaching, conservatism, Shaikhs and Ulama for ignoring the world trends. He was appointed a Mufti and in that capacity he gave a fatwa that painting and scrulpture were lawful if they did not lead to idolatry and that depositing money with banks on interest was lawful. He believed Islam to be a rational religion and opposed old interpretation and he believed that there was nothing in the Quran against Darwin's theory. He was a friend of Jamaluddin Afghani, though the two differed in religious matters.

Taha Hussain born in 1890 cast a doubt on Quran and Sunnah and the story of Abraham and Ismail of having built the Kaba. He sought to make Egypt a part of Europe and his lectures on Voltaire

and Jean Jacques Rousseau in the American University Hall were attended by vast audience of young men of Egypt.

The old interpretation of the Quran was not accepted by Abu Taimiya and Abdul Wahab who taught that Islam was not static but a dynamic religion which in itself contained forces which would enable the Muslims to seek scientific and technical knowledge to put them on a level with the advancing nations of the world. But the most famous of these men was Sir Syed Ahmad Khan who gave a symbolic meaning to certain Islamic doctrines, which have been mentioned in an earlier part of the book (See Chapter I).

Faizi, a highly educated Indian, agreed with Azad's commentary on Fatiha that the object of religion was service of humanity and that static law was unsuitable to a progressive society. He thought that Islam had two sets of rules, one that do not change and the other that cannot stand against change. He was in favour of complete religious freedom.

Jamaluddin Afghani preached his pan-Islamism while Faizi separated religion from politics and made it an affair of the individual.

Arab Nationalism strikes at the root of a fundamental concept of Islam. No Arab State is religious. The Arabs revolted against the Turks and this revolt was engineered by the "train wrecker" Lawrence, called train wrecker because he blew up a train of Turkish soldiers, and was headed by the Sharif of Mecca. In return they obtained two kingdoms, Jordan and Iraq, and Saudi Arabia was confirmed in independence.

INNOVATIONS IN ISLAM

When Masud (Khaddar), a member of the ICS, called Khaddar because he always wore home spun, following the example of Ibne-Tumarat, Mehdi of Sudan, Zia Gokalp and Kamal Ataturk of Turkey started to say prayers in Urdu in Bagh-e-Jinnah (Lawrence Garden), he was interrupted by people on the ground that he was guilty of bidat (innovation) and who entertained the belief that Allah has prescribed prayers in Arabic and stopped him. They forgot that in Sura Baqar, 78th Verse, Allah has himself said "that there are among you illiterate people. They do not understand the meaning of God's

words but from hearsay and they do but conjecture". And in Chapter 5, Verse 45 Allah has said "Don't go near prayers when you are intoxicated unless you understand what you say in prayers". Muhammad Hussain Khan who passed most of his life in the most orthodox country, Afghanistan, in three reigns, mostly in prison, in his book "Ever Universal Religion" says at p. 254 "It is a curiously pitiable phenomenon that the Quran forbids idol worship because the idols do not understand the petition made to them, and here the worshippers of God do not understand what they say in prayers to Him. What fellow will understand a supplication by rote and being recited in a foreign language to his Master. The highest Master knows every dialect and accepts that which comes from the heart". It is a horrible mockery, in the words of Sir Arthur Helps, to utter prayers which are not understood. Besides they teach the most stupid habit of speaking meaningless phrases and consequently doing things which do not tally with them." Quoting Zia Gokalp and citing the instance of Ibn-i-Tumart of Sudan, Allama Iqbal says if the aim of religion is the spiritualisation of the heart then it must penetrate the soul of man, and it can best penetrate the inner man only if its spiritualising words are clothed in the mother tongue.

SACRIFICE

Some time ago when Maulana Ghulam Murshid, Khatib of Shahi Masjid, in the course of an Id Khutba happened to say that sacrifice in places other than Mecca on the occasion of Hajj need not be performed, the Maulvis raised a hue and cry and the Maulana had to leave his office. An A'alim from East Pakistan in the meantime sent me a well reasoned book in which he not only agreed with Maulana Ghulam Murshid but also pointed out the economic effects of sacrifice on society.

The pity is that we don't understand the principle of a rule, the ratio legis of an injunction. We throw stones at Satan on the occasion of Hajj, but having done so how many people repudiate Satan in their practical life and avoid evil things?

Chapter XVI

ECONOMIC CONDITIONS

Of primary importance to Pakistan is the question of its economic conditions, because a poor man verging on starvation lacks resistance to disease and is consequently an easy prey to it. To persons in that condition it is ridiculous to talk of other, perhaps sublime things. Poverty in Pakistan is so widespread that according to calculations 80 P.C. of the people are living on starvation level, with the result that they do not have energy needed for their normal work, and this is reflected in their production. Those who have some experience of village life know how wretched are the conditions there, the small farmer or labourer eating a chapati with nothing more than salted ground chillies. The same is the position regarding education. The village boy has to go to a distant place where there is a school. The Quaid-i-Azam had put special emphasis on the betterment of toiling masses in his speech of 11th August.

Reformation of society should be the object of any Government that is interested in the welfare of the people. General Muhammad Ziaul Haq has this object in view before elections are held. But crime is on the increase and shows no sign of diminishing. You open a newspaper and the first thing you read is some robbery or theft or murder or some other offence like cheating and fraud or bribery and this despite the condign punishment that is inflicted on offenders by public hanging and whipping. The preaching and talking of Islam has no effect on the general public crime. In my colony, and this is considered to be the safest colony, within the last

fortnight there have been four attempts of theft and two instances of attempted robbery during the last month (April). The police has not been able to trace the culprits in a single case. The law and order situation has deteriorated to an extent that people have had to make special arrangement for their protection. Bribery is rampant in all public offices and has seeped down to lower levels or seeped up from the lower level to the higher level, with the result that it has come to be considered as a normal affair. Why is it so when we are Musalmans? The answer is not far to seek. It is the increasing prices of consumer's goods which has broken the back of the middle class and the advancing unemployment which again is the root of all crimes. The first thing that a poor man desires is his bellyful, whatever the philosophy you teach him. During the last two years prices have doubled while the salaries have remained stationary, making it impossible for the people to make both ends meet. Inflation is not peculiar to Pakistan; it is a world wide phenomenon. But despite this inflation prices in the neighbouring country are comparatively low. Here to purchase a tractor you have to pay double the price than in India. We cannot produce a tractor or a car, you have to import them, while in the neighbouring country, India, they manufacture cars as well as tractors. India is self sufficient in food and surplus in sugar while we import millions tcns of wheat from America. Yet Punjab used to be the granary of India before Partition and despite their comparatively smaller holdings, Jat Sikhs of India, have brought about what may be called a green revolution.

Income per capita which reflects the prosperity or poverty of a country is very easy to determine. Take the total production, including in it the pays of Government employees, deduct from it the interest if there be any on foreign loans, divide the remainder by the number of population and you have the annual per capita income of an individual. This will hold good in the case of a country which does not export or import anything but in the world of today this is not so simple. There is hardly any country which does not exchange its goods for those of another country. Where such is the case you have to take into account the balance of trade, in order to determine per capita income. You have to deduct the minus balance from production and add to it the surplus balance, if any.

provided that the exported commodity is not counted twice. The position is further complicated when your currency is linked with the currency of another country, say the dollar or the pound sterling. As the dollar or pound appreciates in value, you have to pay more of your currency per dollar or sterling but in that very situation your country becomes more favourable for exports and less favourable for imports and that is the reason for the devaluation of currency, to increase exports. From this you can judge what important part the population of a country plays in determining the per capita income. The more currency you have in circulation in Pakistan, there will be inflation and the price of goods will rise. This happened in the time of Mr. Bhutto when millions of currency notes were printed.

We are a heavily populated country, and population is rapidly rising, having jumped, notwithstanding separation of East Pakistan, from 5 crores to 7½ crores. The birth control system still functions but the Jamaat-i-Islami like the Roman Catholics is against it, vide Maulana Abul Ala Maududi's pamphlet "Zabt-i-Taulid". Marriage under Muslim Law is a civil contract for the procreation of children. With little curb on this procreation, and with the system of palygamy and muta marriages, the population of the country is bound to go up by leaps and bounds even if we do not accept Malthus' theory that population increases in geometrical proportion while agriculture increases in arithmetical proportion. I remember two traditions as regards birth control, one of them related to Uzal and the other related to something else. This was in 1953-54 while I was holding an inquiry into the Punjab Disturbances. Calculated in this way our standard of living is very low because our per capita income is low. According to calculations published in the 'Nawa-i-Waqt' the annual income per capita in Pakistan 60.50 rupees. Thus we are one of the poorest people on earth.

Iran is occupied with its own problem, Egypt with its own, other Arab countries differing from Egypt over the Israel issue. Afghanistan has created a new and complicated problem for us. While Iran and religious leaders of Pakistan are advocating open help to dissenters who are fighting against Turkai's Government, the

Pakistan Government is treating it as an internal affair of Afghanistan. Thus an effective alliance between Pakistan and other Muslim countries appears to be a farfetched idea. Last night, on December 15, 1978 a member of the Muslim Chamber of Commerce, suggested the idea of international trade between the Muslim countries. His proposal was that the Muslim countries survey their resources and see what each country imports and exports. Then a trade alliance between Muslim countries be established, each country examining its resources and its import and export position. An alliance of this kind is possible provided the Muslim countries cooperate. In fact much an alliance I had suggested in my book "Islam aur Tehzib-i-Hazira" at p. 262.

Without heavy industry a country cannot rank among progressive countries of the world, and heavy industry requires resources and technological expertise. Of primary importance in industrial development are coal and iron. Hydal power is replacing coal in countries where they can produce sufficient electricity to meet their needs. Nuclear energy and solar energy are in an experimental stage, even in countries which are the most advanced in the world. We have not yet made even a beginning in the production of nuclear and solar energy. We do not have the quantity and quality of coal and iron for us to launch a programme of industrial expansion on a large scale. For hydal power our hopes centre on Tarbela and other dams but they produce energy which is not even sufficient for our non-industrial use; only a part of that power is consumed in industrial undertakings. We are left with natural gas which though substantial cannot satisfy our industrial requirements.

OIL

We produce little oil though Saudi Arabia, the Gulf States and Iran produce millions of barrels a day. The source of oil is supposed to be organic, as for instance, forests and living organisms which lived on the earth millions of years ago. Several thousand years ago, some 5,000 years before the birth of Christ, oil was known to men on the shores of Black and Caspian seas. The Chinese drilled oil several centuries before Christ. But the modern oil industry was set up in Rumania in 1857. Two years after this an oil drilling machine was

installed in Pensyslvania in the United States. Hitler's oil needs were all met by Rumania. Even now in the production of oil in Europe it is second only to Russia. The discovery of oil fields in Saudi Arabia, Iran and along the Persian Gulf e.g. Kuwait, Abudabi, Dobai and Qatar is a matter of recent history where millions of barrels of oil are produced and refined every day. The Arabs who get the money from oil spend it in the night clubs of Europe.

Thus Saudi Arabia has become a super financial power. The Saudi Arab money from the sale of oil is so colossal that if they withdrew their bank deposits from the American Banks and deposited them in Europe, it can create a banking crisis in America. If that is correct why are they afraid of that small strip of land called Israil. The reason is obvious; they don't have sophisticated weapons of war nor does America supply them the quantity they desire. Whereas Israel can manufacture such weapons and the supply to it from America is as much as they need.

Yet oil is not an inexhaustible commodity. Sooner or later the oil wells will dry up. And if during these years they don't industrialise their countries and acquire the technological skill they will revert to their original position.

We in Pakistan, for years together, have been getting the glad tidings that oil has been discovered in Pakistan but no material result has come out of these tidings.

Chapter XVII

ELECTIONS AND AMENDMENTS TO THE CONSTITUTION

There are more than a dozen parties in Pakistan waiting for the November Elections. The first question that arises is whether in an Islamic State there can be any party at all, unless the community is split up into two faction the Shias and the Sunnis. The second question is whether minorities can take part in the elections and be members of the legislature with the same rights as Muslims. In my opinion it is impossible to put the unbelieves in the same position as the Muslims, there being no instance in an Islamic State where the unbelievers were included in the law making body.

Seats are reserved under the existing law for the minorities and they are chosen by the other members of the National Assembly or Provincial Assembly but there is no bar against their standing from their own electoral area. Now they are going to be separated from these electoral areas and they will have their separate electorates and lose their right to vote or stand for election in what were their electoral areas.

If the existing political parties are allowed to stand for election what will be the party formation in the National Assembly or a Provincial Assembly. It is hardly likely that one party should have such majority as to form the Government. The result will be that a coalition government or national Government will have to be formed. But how long will such Government last and act as effectively as a single party Government. Will it justify the army to again take over the administration in its own hands.

The next question which is occupying the attention of the President is the system of checks and balances between the President and the Prime Minister and whether the Presidential or Parliamentary system is more suitable in Pakistan. For the purpose the constitution shall have to be amended. This power is given to him by the Supreme Court but without defining the limits within which it can be exercised. Apparently it means that the power to amend the constitution is circumscribed by the law of necessity. In England the extent of equity jurisdiction has been defined as where the Chancellor can put his foot. So in Pakistan the jurisdiction to amend the Constitution depends on what the Chief Martial Law Administrator considers necessary. But the question still remains whether this power is only for the period of Martial Law or it extends beyond it.

General Muhammad Zia-ul-Haq has expressed the view that elections which are scheduled for 17th November may be postponed due to internal and external causes, and that if elections are held the PPP will be permitted to take part in them. General Zia is too much committed to hold elections on November 17, and it will be difficult for him to back out of this commitment. Despite the disqualifications and convictions of the prominent members of the PPP there is a likelihood of that party winning the elections if they are held in a fair and impartial manner. But before the elections are held power may be transferred to another General who will respect the Islamic laws promulgated by General Zia. But what after that General?

Now, after three general elections under the existing system, it has dawned on Justice (Retd.) Hamood-ur-Rahman that the system of proportional representation is "rooted" in the constitution of 1973, and that it is more suitable for Pakistan. In this connection the instance of Germany has been cited. The object and implication of introduction of the new system are clear to anyone who has studied the position of parties in this country.

This system has various forms—the single transferrable Vote, cumulative voting and the list system. The system was tried in Weimer Republic of Germany from 1919 to 1933, and in postwar France (until 1951) and Italy (until 1953). But it has since been

given up. The principal objection to proportional representation is that it leads to encourage the organisation if too maney parties, with the result that no party has a majority vote in the legislature. Under such circumstances all governments, often lacking real authority to govern.

It is a system of voting whereby the elector votes by numbering the candidates and the votes in excess of those needed to elect him are transferred to others. The system is unpracticable and extremely complicated and prevents any party from securing a working majority. As the system is extremely complicated, election officers who will be taken from the army and the Judiciary, will have to be trained in the system. This may delay election which might possibly be questioned by a writ, with a stay order, further delaying the elections.

And what about Nizam-i-Mustafa where there were no parties?

And why not have functional representation instead of proportional representation ?

There is no parallel between the Federal Republic of Germany and Pakistan, because West Germany politics follow the Anglo-American pattern in being essentially a two party rivalry. One of these parties is the Christian Democratic Union which with its sattelite, the Christian Social Union, enjoys majority voting strength, with its rival free Democratic Party in close contest. Now if one of these parties wins a single member constituency by, say 51 votes, the votes cast by the other party, say 49 are completely lost, which is inequitable. That is the reason why in Federal Republic of Germany the system of proportional representation is partially adopted. But where there is a plethora of parties as is the case in Pakistan, the adoption of proportionate representation will merely promote the multiplicity of parties, some of which can win only a few seats. The further distinction is that whereas the constituent members of the federation are also states which have a Republican Form of Government with ministerial responsibilities in Pakistan such constituents are more Provinces, created by the constitution with defined powers.

Chapter XVIII

THE RESURGENCE OF ISLAM (MODERNISTS AND TRADITIONISTS)

Since the assassination of Ali in 661 A.D. there has never been a political state governed by Islamic Laws. According to the Shia belief such Islamic State ended with the death of Muhammad (may peace be upon him) in 633 A.D. Thus we have a total period of 31 years, beginning with the battle of Badar, when the Islamic State was founded in Madina in 630 A.D., to the assassination of Ali in 661 A.D. during which the Islamic State functioned according to the Sunnis, and a period of 8 years or more only according to the Shias.

After a lapse of 1318 years two Islamic States have come into existence. One of these is Pakistan whose aim is to restore Nizam-i-Mustafa in the country. The other is Iran who has set up a Revolutionary Council at the instance of Khomeini, who after the Shahanshah of Iran left for Morocco, returned after 15 years of absence in Paris. By a referendum in favour of Islamic Republic of Iran, he has secured an overwhelming majority. He has had prepared a Constitution for the Constituent Assembly which is timed to meet on 31st June or later and which will adopt the Constitution already prepared by a committee of experts. The beginning of the Islamic Republic has been made by putting more than 436 people before the firing squad and there is a large list of others who have the same fate in store for them. Among those who have been shot are Amir Abbas Haveda, the Prime Minister, several Ministers, Generals, and other high officers who were executed after a short

secret trial by Khomeini's tribunals. The firing squad is as busy as the guillotine during the French Revolution. The persons executed were all supporters of the Shah and this was the charge against them. But there has appeared a split in Khomeni's party between him and another man named Aayatullah Mahmood Taghliani who in Tehran was recognised as their leader by thousands of people. The cause for this difference was the arrest by Khomeni of his two sons who were tortured and beaten. Now a general order has been issued by the Attorney General annulling all warrants of arrest and directing that no person will be arrested or imprisoned without proper authorization. Despite this order, about a dozen men were shot by a firing squad yesterday (May 8, 1979). More people have since been killed. Taghliani has met Khomeni but the result of their talks is not known. The position in Iran is confused but a split in right-wingers and communists has been more marked. A Sunni Mufti has raised the standard of revolt in Kurdistan. In the town of Masjid Sulaiman, heavy fighting is reported between Revolutionaries and counter revolutionaries and 20 thousand men in Mahabad acclaimed their leader Shaikh Ezzedin Musein. In the province of Kurdistan there have been clashes between Arabs and Khomeni's forces in which 40 people have been killed. The U.S.A. Senate has expressed concern over the executions in Iran and has clearly told Iran that they consider them as offending against human rights and justice. The Shah in Bahamas in a television interview has regretted the happenings in Iran and has appealed to the people to return to sanity. He with the Queen and his sister Ashraf Pahlvi and other members of the family has since been sentenced to death, at a trial held in his absence. He has now gone to Mexico, with a price on his head.

Khomeni hates everything western and has ordered that anyone adding the word "democratic" to the Islamic Republic of Iran will be treated as guilty of treason and will be dealt with accordingly. Democracy to him is a western and non-Islamic idea. But today (26th May, 1979) he has said that freedom and jamhuriat (democracy) is another name of Islam. What will be the features of the Constitution of the Islamic Republic of Iran has not been officially announced but the main features of the Islamic Republic of Iran

have been disclosed by the daily 'Kaihan' of 28th April, 1979 as follows :—

1. There will be a constituent assembly to be convened as originally arranged but now postponed indefinitely.
2. There will be a single-chambered parliament, members of which will take oath on the Quran that they shall abide by the principles of the Islamic Republic of Iran. Their term will be four years.
3. The State shall nationalize all banking and insurance companies; the State shall also have the power to nationalize other industries and agricultural concerns if it considers it to be in the national interest.
4. There shall be a Council of Guardians, consisting of mujtahids who shall supervise Parliament to see that the Laws made by it are Islamic and in case of difference between the Council and the Parliament the matter will be referred to a religious authority of acknowledged status.
5. There shall be freedom of Press and no censorship but this freedom will be subject to the conditions that the Press will not engage in any subversive activity, will not offend public decency, will not insult people or tell lies.
6. The constitution shall outlaw martial law, telephone tapping or tampering with mail.
7. The constitution shall give equal rights to men and women and provide free education.
8. Seats will be reserved for the minorities, one for Zoroastrians one for Jews and 2 for Christians.
9. The constitution shall be made by the Constituent Assembly.

Now an official draft of the constitution has been published (Pakistan Times, June 10) the main features of which are as follows:—

1. The draft will be open to public scrutiny for a month.
2. A council of Examiners consisting of constitutional experts will be elected.

3. The council will examine the draft for a further period of one month, after which the draft will go for a referendum.
4. The draft will then be placed before an elected Assembly which will consist of 75 members, elected from all the provinces.
5. There will be a single chambered Parliament consisting of 220 deputees. (This parliament will include persons who are in favour of popularly elected Assembly).
6. The Head of State will be an elected Muslim who will have the powers :—
   (*i*) to appoint a Prime Minister who enjoys the confidence of the Parliament.
   (*ii*) to call for a referendum to dissolve Parliament, once during his four years term.
   (*iii*) The President will be the Supreme Commander of the Armed Forces, who will have the power to declare war.

This constitution has been rejected by the Kurdistan Leader, Ahmad Mufti Zadah, a sunni leader, on the ground that it makes Shia Islam the religion of the land. Muhammad Riya who is a Shia has said that Shia religion as a state religion would cause concern to the sunni Arabs, Kurds and Turkomans. Yesterday (24th June 1979) several thousand peoples, called by Matin Daftri, demanded that the constitution must be ratified by 220 members of National Assembly before it is put to a referendum while Khomeini is of the view that the constitution should, after a month's scrutiny by the public, be ratified by the 25-member eleeted Assembly, before it is put to a referendum. Meanwhile the banking Institutions, Insurance Companies and some other heavy industries have been nationalised.

In Pakistan some Islamic Laws have been passed but neither in Iran nor in Pakistan a full-fledged Islamic State has as yet come into existence. The difficulties facing a completely Islamic State have been thrown in the background. Mr. Bhutto has been executed for murder, and the PNA has quitted the Martial Law Government, on the ground that they had joined the Government for the purposes; (1) of enforcement of Nizam-i-Mustafa and (2) for restoration of

democracy, and both these purposes have been fulfilled, as Elections are to be held on 17th November. As for the enforcement of Nizam-i-Mustafa, certain laws have been passed, the most important of which is the Order by which a Shariat bench has been established in each High Court and a Shariat Appellate Bench in the Supreme Court. Their function will be to declare a law invalid if it is contrary to the Quran and Sunna. This Order has been applauded by Jamaat-i-Islami and Maulana Mufti Mahmood as a landmark in the enforcement of Nizam-i-Mustafa. Analysed, it will be found that this Order falls very short of making a beginning in the introduction of Nizam-i-Mustafa. Some Ordinances have been promulgated making certain crimes punishable in accordance with Islamic Law.

In the first place the Shariat Benches Order exempts from the jurisdiction of the Shariat Benches some important laws, and by providing that other equally important laws will come within the jurisdiction of Shariat Benches after three years. In the second place cases instituted before or after the Order will be decided according to the existing law and not according to Shariat Law. If the elections are held as announced on 17th November, 1979, it will be a question whether Shariat Benches will lapse. As pointed out by Mr. Brohi, the Shariat Benches Order promulgated by the Chief Martial Law Administrator will lapse when the authority of the Chief Martial Law Administrator comes to an end, unless they are kept alive by the new Government that will come into power after martial law has ceased. There can be no doubt about Mr. Brohi's statement of the position because it is a well established rule of law that with the termination of martial law, all laws made during martial law lapse unless the legislature that comes into power after the elections wishes to retain them. Of course the sentences already executed or expired and all other acts done during the regime will not be liable to be questioned. Long term reforms have been proposed by General Muhammad Ziaul Haq but it is doubtful whether they will survive his regime.

As regards the restoration of democracy as a form of government, this will not be an Islamic form of Government. Such Government was not a part of Government during the Nizam-i-

Mustafa. When Khomeinis ays that it is a western idea to be hated in the Islamic Republic of Iran, there is no doubt that he is correct. But will our Jamaats also accept this statement by Khomeini? Certainly not. So here are two different versions of Nizam-i-Mustafa, Khomeini saying that it is treason to add the word "democratic" to the Islamic Republic of Iran; in Pakistan they presume democracy as a part of Nizam-i-Mustafa, because they deny the assimilative character of Islam. The political parties in Pakistan will never admit that Nizam-i-Mustafa has any assimilative character, though from their demand of democracy as another demand it is clear to any observer that in their heart of hearts they are making a demand for democracy as an independent demand, not included in their demand for Nizam-i-Mustafa.

At this stage a vital question arises. Democracy being a form of Government, it embraces all aspects of human life. If our doctors of Law demand this form of government, how does it affect their demand of Nizam-i-Mustafa? Are they not deliberately deceiving themselves in their claim of Nizam-i-Mustafa; since that Nizam does not in fact offer them a democratic form of Government. They ask for a Nizam which is perfect in all respects, to which nothing can be added and from which nothing can be subtracted. Democracy being merely a form of government, did not Nizam-i-Mustafa have a government and the laws which that Government administered? Was democracy a part of that Nizam. If not, the demand for democracy comes in conflict with that Nizam.

General Muhammad Ziaul Haq did not make the Islamic Laws for a temporary period, to be amended or revised by the legislature that will come into power after the November Elections. Therefore he will see to it that these laws are retained by the legislature that comes into power after the November elections. How he does it is a matter of guess, and I do not venture to make any guess.

ISLAM IN INDIA AND ELSEWHERE

In dealing with the subject of reinterpretation of Quran we had better begin with a thorough traditionalist, Sheikh Ahmad of Sirhand, called Mujaddad Alf Sani, belonging, to the sect of Sufis of the

Naqshbandi Order. He is called Mujaddad because he attempted to restore Islam to its original form. He was born in the time of Jahangir and his effort was to clean Islam of the impurities which had come to cling to it during the Muslim's long contact with the Hindus. He was specially against Akbar's Din Ilahi and against the Hindus who were idolators and deserved the treatment of idolators.

He, was therefore, in favour of imposing Jizyah on them which had been abolished by Akbar but reimposed by Aurangzeb who followed the teachings of the Sheikh when he became the Emperor. The Sheikh thought that Shariat had been losing its hold on the masses and attempted to revise it in its pristine glory. Though he was himself a Sufi, he differed from the other orders of Sufis who merged themselves in God. His teachings created a split between the Shias and the Sunnis also.

Aurangzeb was a great Moghal Emperor but his successors were mere nin-compoops, with the result that in Mohammad Shah's time Nadir Shah attacked and ransaacked Delhi, and took away the peacock throne and the Kohinoor diamond and all the wealth of Delhi.

Ahmad Ibn-i-Abdurrahim, commonly known as Shah Waliullah, was the first person who revived the theory of Ijtihad in India, namely, independent opinion in religious matters. He was also a traditionist and believed in the Quran and Sunnau but he claimed for himself the right of forming his own conclusions by interpreting them. He was born a few years before Aurangzeb's death at a time when the Moghal empire was at its lowest ebb. Islamic commands, according to Shah Waliullah, had to be followed for their social benefit and they have to be judged by the benefits which they conferred on the Muslims. He thought that if Islam was followed as was ruled by the jurists at the end of the 10th century, it would endanger the Muslim society. He believed in the victory on the battlefield and invited Ahmad Shah Abdali from Afghanistan. Accordingly Abdali came, fought the third battle of Panipat with Marhattas in 1761, defeated them and entered Delhi. Shah Waliullah believed that success in religion depended on the political power of the Muslims. It was for the reason that when he saw the

decline of the Moghal Empire he invited Ahmad Shah Abdali. Thus religion meant to him acquisition of political superiority.

Even before Shah Waliullah's time Sirajud Daula, the Nawab of Bengal, had attempted to prevent the advance of the British and their colonialism by fighting but was defeated in the battle of Plassey in 1757. Tippu had fought with the British in defence of the faith and was with his soldiers killed at Sirangapatam in 1789. Syed Ahmad Shahid had founded at Calcutta the movement called Tariqat-i-Mohammadia to which thousands had flocked. He went to the tribal area, N.W.F.P. and Afghanistan and declared Jehad in 1870 but though he gathered there a following of almost 600 people, he with Shah Ismail Shaheed and his followers was killed at Balakot by the Sikhs.

In Morocco, Abdul Karim revolted against Spain and then against the French but on being captured by the French was banished from the land. Ahmad bin Billa fought against the French who had ruled Algeria for 150 years and after seven years struggle in which one million Algerians died won independence for Algeria. Soekarno in Indonesia was engaged in winning freedom from the Dutch. Thus from the battle of Plassey, right through the 18th century up to today Islam has been struggling for supremacy. Even the Mutiny of 1857 is considered by some historians as a war of independence though it resulted in the trial and banishment of Bahadur Shah Zafar after which the crown took the administration of India into its own hands.

The spirit of search, kindled by Shah Waliullah, was everywhere. The sect of Ahli-Hadis came into existence in imitation of Abdul Wahab in Arabia. This sect believed that apart from the Quranic commands no Islamic doctrine was fixed for all time to come and that the sunna was liable to scrutiny. They did not feel bound by the opinion of ancient jurists and were therefore called GHAIR MUQALLID. They don't belong to any recognized school of Sunnis and denounce the worship of saints and sufis. They are called Ahl-i-Hadis because if after scrutiny they find a hadis which is reliable, they attach to it a position which is next only to the Quran. The Ahli Quran completely discarded the Hadis in view of its infirmity. Of the post mutiny thinkers Sir Syed Ahmad Khan stands

alone, unapproached and unapproachable in his exposition of Islam. A part of his religious beliefs and his exposition of Quran has been given in Chapter I. He believed that Islam was the most natural religion of all. Everything said in the Quran accorded with ascertained laws of nature. He therefore interpreted the Quran accordingly. This brought him in conflict with ahadis. He dispensed with them unless they were consistent with the Quran as interpreted by him. He was in favour of western education and had no belief in Maktabs and Madrasas that were functioning in his time, teaching the students parrot-like repetition of Quran. He established at Aligarh, the Aligarh College, which produced men who loved Islam and favoured modern trends. He had his own way of interpreting the Quran and did not feel bound by the interpretation that had been given to it at the end of the 10th century. He was against the amputation of limbs as a punishment for certain crimes.

As against all this, we have Maulana Azad, Jamiat-ul-Ulmai-Hind and Jamia Millia near Delhi. Maulana Azad thinks that all monotheistic religions are true, only the mode of worship being different. His commentary on Surat-ul-Fatiha is as deep and convincing as any other commentary ever written. He was against Pakistan, on the ground that for a large continent of which he was a citizen, he would not have a small strip of land and be its citizen. Similarly Jamiat-ul-Ulam-i-Hind were against the establishment of Pakistan. They were with the Congress and supporters of its ideology. The Jamia Millia founded by Dr. Zakir Hussain, later President of India, thought that Hindus and Muslims had to live together and Muslims were Indian citizens in the same sense and the same manner as the Hindus.

FAMILY LAWS ORDINANCE

But nowhere else are the differences between modernists and traditionalists as apparent as in the case of Family Laws Ordinance. The Government thought that on three points the law relating to family relationship required re-examination. These were (1) the disherison of a son who had lost his father from the property of his grandfather when other sons of the grandfather were alive (2) the ban against a wife who had been finally divorced (Talak Bain) against

marrying her husband without undergoing a marriage with a third person and consummating the marriage with him (3) the right of the husband of having more than one wife, without sufficient ground for the second marriage. Therefore a Commission headed by Sir Abdur Rashid, Chief Justice of the Supreme Court, was appointed to re-examine these three matters. The Commission recommended that the law on all these points was being wrongly interpreted by the traditionists and gave their opinion against all the three points. They held that the son in the circumstances could not be excluded by his uncles from his grandfather's property. That the restriction against the wife remarrying her husband without her marrying a third person and consumnating the marriage and on being divorced by him was wrong. And the right of the husband taking another wife in the presence of his first wife without assigning any reason, though it was lawful, but the husband so taking another wife without the permission of the arbitration council made himself liable to fine.

When I joined the Ayub Cabinet in 1962 there were demonstrations against these laws which had been enacted by an Ordinance, embodying the Commission's recommendations. The Maulvis protested against the Ordinance urging its repeal; the women urged to retain it. But since the repeal of the Ordinance was not moved by any member, it remained on the Statute book and is still the law and has now been excluded from the jurisdiction of the Shariat Benches. The Commission consisted seven members including Maulana Ihtishamul Haq who wrote a note of dissent, embodying the orthodox views.

PRINCIPLES OF ISLAM

The modernists think that instead of Orthodox Islamic Law, the principles of Islam should be made the basis of the legal system. These principles have been defined by the Quaid-e-Azam as follows:—

No theocracy.

Social justice.

Equality, especially equality before the law.

Unity among the Muslims.

Betterment of the toiling masses.
Faith, meaning confidence in oneself.
Discipline.
Brotherhood of man.
Fair opportunity to all.

Reference to Ayub's speech at Tando Allahyar, before members of Darul Ulum, has already been made. That speech correctly represents the function of religion and the relation between life and religion. Ayub also made on occasions stray references to Islam which again represent his attitude towards religion. The following statements which he made from time to time are his views which deal with the principles of Islam :—

1. Religion is for man and not man for religion.
2. An Islamic constitution did not however mean that Pakistan should revert to backwardness. Islam is a progressive religion and a religion for all times and people. If being a Muslim means going back to the system of 1300 years ago, then he was not for being a Muslim.
3. Fear of God, love of humanity, help to the poor and care of the orphans are the basic principles of Islam which can never perish.
4. As to the assimilative character of Islam he said: "Take what is clean, abstain from that which is unclean."
5. Ayatulla Khomeini, leader of the Islamic Republic of Iran, has asked the nation to vote for the 75 member constitution committee who believe in Islamic principles and not in the Shia sect. Let me close this chapter with the remarks made by Abbott at the end of his book "Islam in Pakistan." Pakistan has so far produced few theologians to take their place among the modernists but their appearance must soon be expected unless the process of religion or unless the idea of religion itself has no place in the modern world".

SECULARISM IN ISLAM

Islam aims at creating an egalitarian society, namely, a society in which man cannot exploit man nor can take advantage of the helplessness of those who are less fortunate, and due to circumstances, remain in perpetual poverty. In Nizam-i-Mustafa the State of Islam

was affluent with money flowing into the Treasury from Khums, Zakat, (including Usher) and the capitation Tax (Jizyah). Khums is no longer available as Jihad with its corollary of 1/5th of the booty seized in war coming to Baitul Mal is not now the kind of war that Islam had to engage itself in conquering the world. Capitation Tax (Jizyah) can no longer be levied on the people of the book or the idolators. All that is left of the ancient system of taxation is therefore Zakat. Though there is the instance of Mussalima Kazzab with whom Hazrat Abu Bakar waged a war because he declined to pay Zakat, there is no instance in Islamic history where the State used its coercive power to realize this due which people voluntarily spent on relief of the poor or deposited in the Baitul Mal. But assuming that the State can by law recover Zakat, the proceeds from it will be quite insufficient to the growing needs of the State. Thus taxes which were not levied in Nizam-i-Mustafa will have to be levied if they are not repugnant to Quran and Sunnah. In the same manner laws which are not opposed to the Quran and Sunnah may be lawfully passed. Existing laws are thousands in number which do not contravene, directly or indirectly, the Quran and Sunnah. They mostly relate to activities on which neither the Quran nor Sunnah had anything to say, and on the authority of the tradition, "If I order you to do something dealing with your religion, do it. But if I order you to do something on the basis of my opinion, well, I am only a human being, you know the affairs of the world better", are valid and constitute the secular part of Islam.

But as to the restriction that laws should not be repugnant to Quran and Sunnah, different views have been taken of them. As will be apparent from what I have said about the Order and Ordinances, while the PNA was associated with the President, they represent the orthodox view. If you slavishly follow the ancient jurist's interpretations, you make Islam stationary but if you practise ijtihad, you can make Islam a progressive religion, as change is the greatest sign of God. The Order and the Ordinances present a grim and dreadful picture of Islam and ignore the forgiving and merciful attributes of Allah.

President Zia is a religious minded person but he is not a theologian. Misguided by some members of the PNA, he has passed some substantive criminal laws which, except one, are opposed to the plain terms of the Quran. The Shariat Benches, which were applauded by the Jamat-e-Islami and Mufti Mahmood as a landmark in the history of the country, being subject to so many limitations, are a useless institution. Zia has done and is doing some substantial work which is essentially secular. Would it not have been better for him and the country, if he had engaged himself to matters which are secular and the need of the hour, instead of devoting his time and energy to introduce the so called Nizam-e-Mustafa.

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